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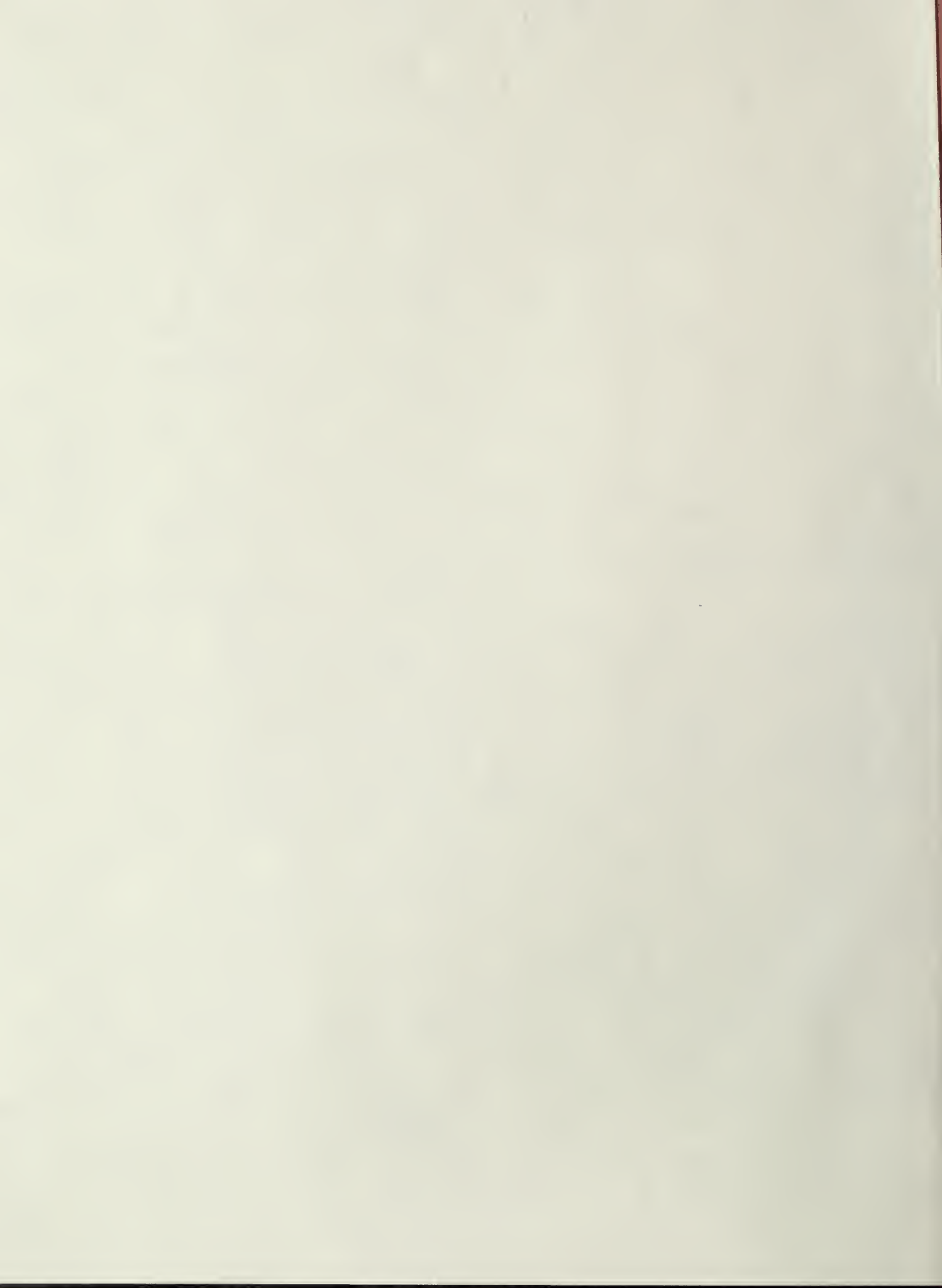
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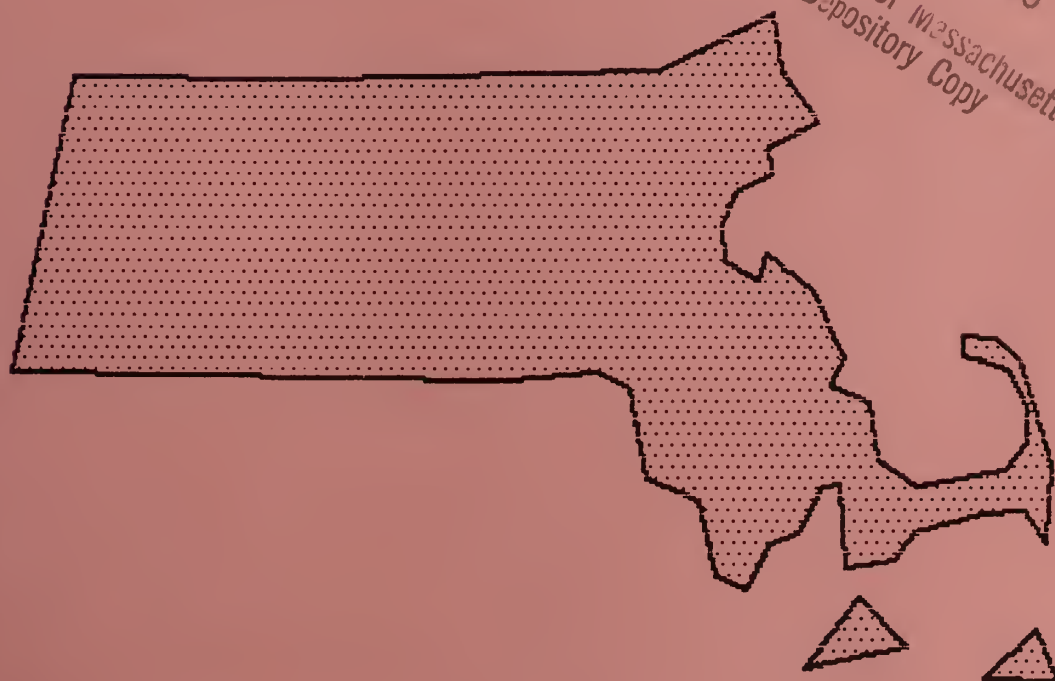
THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE DEPARTMENT

OFFICE OF QUALITY ASSURANCE  
FOR THE MENTAL RETARDATION CONSENT DECREES

ANNUAL REPORT  
MARCH 1988

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MONITORING SERVICES TO 6000 CLASS MEMBERS  
IN THE COMMONWEALTH

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**THE OFFICE OF QUALITY ASSURANCE  
FOR THE MENTAL RETARDATION CONSENT DECREES**

**ANNUAL REPORT**

**MARCH 1988**

Submitted to:

Governor Michael S. Dukakis

and

Philip W. Johnston  
Secretary of the Executive Office of Human Services  
Commonwealth of Massachusetts

Submitted by:

The Office of Quality Assurance  
for the Mental Retardation Consent Decrees

Tom Wachtell, Director

Marianne Taylor  
Anne H. Hutchins  
Karin H. Nystrom  
Carolyn Hugard Neary



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## INTRODUCTION

The Office of Quality Assurance for the Mental Retardation Consent Decrees (The Office of Quality Assurance) was established 15 months ago by Executive Order No. 268 to monitor the quality of care provided to class members, and the state's progress towards compliance with the court's disengagement order of October 9, 1986. The Office of Quality Assurance respectfully submits this annual report to the Governor and the Secretary of Human Services in accordance with those requirements.

The court, in its final order, envisioned that the state would achieve full compliance within a three year period. As we proceed with the second year of that process, this office reports that progress has been made in some areas - problems still exist in others - and much remains to be accomplished. In August, 1987, this office provided an interim report to the administration. As with the previous report, it would be impossible here to identify every issue affecting quality of care and consent decree compliance. This report, therefore, includes updates on many of the issues raised at that time, and raises some new areas of concern as well.

The Office of Quality Assurance continues to work diligently in performing its oversight function, and remains steadfast in the commitment to execute its responsibilities as effectively as it can. Unfortunately, the funding problems for the office reported last August still remain. The office's FY88 appropriation provided only enough funding for five of the eight staff called for in the Executive order and court order, and inadequate funding for certain support costs. The administration has continued its efforts to obtain additional funding from the Legislature, including making a request for funding from the Governor's Emergency Reserve Account. In addition, staff from this office as well as members of the Advisory Panel have communicated with Legislators and their staff on this matter. These efforts have yet to result in additional resources. While the Department of Mental Retardation has been providing assistance in certain areas, the lack of adequate staffing continues to constrain this office's monitoring capacity.

The Office of Quality Assurance is very appreciative of the support and commitment the Legislators have continued to show over the years in funding the consent decree improvements. The investment they have made to enhance the lives of mentally retarded persons is substantial. This office will continue to do everything it can to help ensure these investments are used wisely.

The Office of Quality Assurance's Advisory Panel has provided invaluable assistance and advice, and has played a key role in keeping the office more fully informed on many issues. In addition, staff from several state agencies, including the Departments of Mental Retardation and Mental Health, the

Department of Public Health, the Executive Office of Administration and Finance, the Division of Capital Planning & Operations, the Executive Office of Human Services, the Executive Office of Communities and Development, and the Governor's Office of Human Resources, have continued with their cooperation and support. Representatives from many advocacy agencies, including the Massachusetts Developmental Disabilities Council, the Executive Office of Elder Affairs, the Disabilities Law Center, and the Office of Handicapped Affairs, have also been of great assistance.

Finally, the Office of Quality Assurance is particularly appreciative of the times Governor Dukakis set aside in December, 1987, and during March, 1988, to meet with this office and its Advisory Panel members to discuss issues of concern relating to consent decree compliance. The Governor's willingness to continue to meet regularly to review progress will be of great help in keeping all parties more fully informed on the issues.



## EXECUTIVE SUMMARY

### I. SERVICE PROVISION ISSUES

#### A. THE STATUS OF PERSONNEL REASSIGNMENT

##### SUMMARY OF THE MOVEMENT OF POSITIONS FROM STATE SCHOOLS

In March of 1987, the Department of Mental Retardation (DMR) began to reassign state school personnel to state operated community programs, and to adjust personnel at the schools. These changes were made in accordance with the Single Methodology (the court approved method for adjusting staff resources). By February 1, 1988, 359 reassigned positions and 129 Excess of Quota (EQ) positions had been used to open eighteen programs. Twenty-two programs remain to be opened.

The Department of Mental Retardation feels that sufficient positions will be available to complete the reassignment process, if specific actions occur including an extension of existing EQ positions. However, the Office of Quality Assurance firmly believes that under current conditions too few positions are available to simultaneously open new programs and to correct staffing deficiencies identified at the schools.

The Office of Quality Assurance recommends that DMR:

- \* Seek establishment of additional temporary positions to maintain quality care while allowing cluster programs to open; and
- \* Develop a long-range plan identifying what positions are needed to staff cluster programs and to reduce staffing deficiencies, and project the source of these positions.

##### STATUS OF RESPONSE TO IDENTIFIED STAFFING DEFICIENCIES

Using the Single Methodology in 1986, serious staffing deficiencies were identified at Fernald State School and Monson Developmental Center. Current figures show deficiencies of the same magnitude. Problems are particularly critical at Fernald where high vacancy rates exacerbate the situation, and where serious concerns regarding adequacy of care persist.

The Department of Mental Retardation has still not fulfilled its obligation to adjust staffing at the schools in accordance with the methodology and this office considers DMR's current plan in this regard to be inadequate.

- \* The Office of Quality Assurance recommends that the Secretary of Human Services direct DMR to immediately submit a more acceptable plan to address staffing deficiencies at Fernald and Monson.

## IMPACT OF MOVEMENT OF PERSONNEL ON SERVICES AT THE SCHOOLS

To determine what impact, if any, personnel reassignment is having on the schools' services, the Office of Quality Assurance has reviewed: comprehensive surveys conducted by the Department of Public Health (DPH); complaints brought to its attention; and results of its staff's on-site visits.

Problems associated with staff turnover, vacancies, and floating have been identified at Dever and Wrentham State Schools (the schools from which the most positions have been reassigned). These problems may be associated with the reassignment of personnel.

- \* The Office of Quality Assurance recommends the creation of a special quality assurance team to monitor the effects of reassignment on the quality of care and take appropriate action whenever necessary.

## EFFECTIVENESS OF QUALITY ASSURANCE PROCESSES ESTABLISHED FOR PERSONNEL REASSIGNMENT

The Department of Mental Retardation has developed a variety of mechanisms to monitor the quality of care during the opening of new programs and the reassignment of personnel. Compliance with these processes has been good with the exception of the timeliness of submission and accuracy of the Service Readiness Assessment (SRA). The information provided by this tool is critical to agencies monitoring the adequacy of staffing at the state school locations affected by reassignment.

## QUALITY OF CARE IN NEW STATE OPERATED PROGRAMS

The Office of Quality Assurance is pleased to report that visits to these programs have provided contact with competent and caring staff. Accommodations at these programs are far superior to non-compliant living environments at the state schools and considerably more home-like than most renovated buildings.

The Department of Public Health surveys indicate that direct care staff should be more involved with program planning, and that certain institutional routines are inappropriate for managing a cluster program.

Many day programs planned for cluster candidates have been delayed. As a result these class members have not been able to move to their new homes on schedule.

Finally, unavailability of certain necessary staff has forced cluster programs to contract with generic service providers to a greater extent than originally planned.



## B. MEDICAL ISSUES AFFECTING THE QUALITY OF CARE

### PROPOSED REGULATIONS REGARDING ADMINISTRATION OF MEDICATIONS

The Departments of Mental Retardation, Mental Health, and Public Health have issued draft regulations concerning "medication administration" which would permit unlicensed personnel with appropriate training and supervision to administer medications to people living in community programs.

- \* The Office of Quality Assurance strongly urges these agencies to meet their present goal of producing and promulgating the medication administration regulations in the second quarter of FY89.

### CONTROLS ON PSYCHOACTIVE MEDICATIONS

Six months ago, the Office of Quality Assurance reviewed DMR's efforts toward implementing the Rogers v. Okin decision (which put specific safeguards in place when psychoactive medications were recommended) and found inconsistencies. It appears that most class members living in community programs still lack these protections. Aggressive implementation has been under way at Monson Developmental Center where problems had previously been cited.

- \* The Office of Quality Assurance recommends that DMR develop a plan for the implementation of the Rogers v. Okin decision in community based programs.

## C. EFFORTS TO SERVE CLASS MEMBERS IN NURSING AND REST HOMES

While some progress has been made, greater efforts are necessary to meet the most important unmet needs of many class members residing in nursing and rest homes. Most critical is the provision of alternative residential settings and meaningful day activities. Every effort must be made to preserve the Seven Hundred Fifty Thousand Dollars (\$750,000) requested in the House I Budget.

## D. PROBLEMS WITH RECRUITMENT AND RETENTION OF STAFF

Serious employee recruitment problems exist in Massachusetts for the human service sector of the economy. Problems with staffing stability in community programs has reached crisis proportions: turnover and vacancy rates remain high, dependence upon temporary relief staff continues to increase, and recruitment of qualified staff becomes increasingly difficult. Similar problems are developing at the state schools as well.

The state has taken several initiatives in an effort to address this problem including the creation of: the Cabinet Level Education and Employment Council; the Human Services Jobs Task Force sponsored by the Executive Office of Human Services (EOHS); and the Nursing Recruitment Task Force created by DMR.

Continuing such state directed strategies and developing additional remedies is absolutely necessary. The seriousness of the problem must be publicized and all the resources necessary to develop and implement solutions must be brought together.

## E. ADMISSIONS/READMISSIONS ISSUES

### ADMISSIONS/READMISSIONS POLICY DMR #87-3

This office is pleased to report that on December 8, 1987, DMR formally issued an Admissions/Readmissions policy for the state schools and regional centers. The policy was developed in response to the court's final order, and is the result of input from many divergent points of view. While policy formulation on this controversial issue took much longer than expected, DMR is to be commended for the open nature in which the document was formulated.

### CIRCUMSTANCES LEADING TO ADMISSIONS/READMISSIONS

The Office of Quality Assurance has reviewed the circumstances leading to the admission of many persons to the state schools in the last four years:

- \* 41% were transferred from mental health facilities;
- \* 26% were admitted due to behavioral/emotional needs;
- \* 15% were admitted for reasons related to medical problems; and
- \* 9% were admitted because families could no longer provide necessary supports.

The Department of Mental Retardation must make every effort to strengthen the community service system's capacity to provide medical and behavioral supports to prevent unnecessary institutionalization.

## F. SERVICES TO CLASS MEMBERS

The Office of Quality Assurance is responsible for monitoring service provision to the approximately 6,000 class members living in the Commonwealth of Massachusetts. While the majority of class members are receiving adequate care in appropriate settings, many have yet to realize the full benefits of the consent decrees. Since August, 1987, this office has responded to many new complaints which are summarized below.

Problems with residential services.....	19
Self-preservation problems.....	3
Crisis interrupts residential services.....	3
Insufficient resources delay placement.....	5
Psychiatric problems affect stability.....	2
Inappropriately placed.....	3
Transfer problems.....	1
Medical needs.....	2
Vendor instability, or contract issues negatively affects class members.....	7
Problems with the quality of programs as reflected by the Individual Service Plan (ISP).....	5
Class member's alleged criminal activity disrupts service.....	1
Insufficient support provided to individuals.....	1
Alleged abuse or neglect of class members.....	5
Institutionalization or reinstitutionalization.....	8

Based upon this office's experience with these and other complaints, several recommendations are made.

## G. TRANSPORTATION SERVICES AT THE STATE SCHOOLS

Transportation services at the schools provide people with the means to get to day programs, recreational activities, medical appointments, etc., and to participate in other opportunities for a well rounded life. It is the Office of Quality Assurance's opinion that there are not enough safe and reliable vans and cars to adequately serve the people at the state schools.

- \* This office requests that DMR report on actions it is taking to improve the availability of transportation at the facilities to help ensure there is no disruption in class members' services.



## H. PLANNING FOR PERSONS WITH MULTIPLE NEEDS (DUAL DIAGNOSIS)

Persons considered to have both mental retardation and some other diagnosis or disability pertaining to their mental health are labeled "dually diagnosed". The Department of Mental Retardation will soon submit a plan outlining new directions for serving these persons to a special legislative committee. Presently, there is a scarcity of program models with the appropriate constellation of services.

The Office of Quality Assurance recommends that:

- \* Community based programs be considered as the least restrictive and most advantageous type of alternative;
- \* In cases where state schools are considered most appropriate, the availability of resources and the rights of state school consumers to a safe environment must be considered; and
- \* Such admissions occur in accordance with the admissions/readmissions policy.

## II. QUALITY ASSURANCE PROCEDURES

The Office of Quality Assurance is very concerned with DMR's uneven progress in the area of quality assurance systems development. While some work has been done on the Family/Guardian Monitoring Process, Individual Service Plan revision, Massachusetts Service Coordination Battery (MSCB) revision, and Day Habilitation program accreditation, other critical quality assurance activities described in DMR's 1986 plan submitted to court have not developed as projected. Much greater emphasis must be placed on the development of a quality assurance program to ensure that when the transition period is over, the court and parties will feel confident that the state has the capacity to monitor itself.

### A. FAMILY/GUARDIAN MONITORING PROCESS

Final revisions were to have been completed by March 1, 1988. The Office of Quality Assurance requests that DMR report on actions it is taking to immediately begin implementing this mechanism.

## B. REVISIONS TO THE MASSACHUSETTS SERVICE COORDINATION BATTERY

Efforts have been under way at revising the Massachusetts Service Coordination Battery (MSCB), an assessment tool used to provide information about consumers receiving DMR's services. The Office of Quality Assurance is very concerned, however, that in its revised form, the MSCB appears to be a management information tool rather than the consumer assessment instrument it was originally intended to be.

The Office of Quality Assurance requests that DMR:

- \* Provide a valid annual assessment tool for measuring class member progress; and
- \* Complete the revision of the MSCB.

## C. INTERAGENCY QUALITY ASSURANCE EFFORTS

### THE DEPARTMENT OF PUBLIC HEALTH'S CAPACITY TO PERFORM REQUIRED SURVEYS

The Office of Quality Assurance commends the Department of Public Health (DPH) for excellence in completing surveys and the certification of ICF's/MR. However, insufficient staffing has slowed the certification process. This delays federal reimbursement and results in a lack of necessary information on the quality of services.

- \* The Office of Quality Assurance recommends that additional resources be added to DPH's survey operation.

### EVALUATING DAY HABILITATION PROGRAMS

In accordance with the Department of Public Welfare's (DPW) regulations, as of July 1, 1988, all of the state's day habilitation programs have to be accredited by one of two accreditation agencies. The Office commends DPW for initiating this process. As of this writing, DPW reports that only a few programs have attained such status. It is critical that DMR and DPW continue to monitor the remaining programs' compliance with this regulation.

### CONFLICTING INTERPRETATION OF DAY HABILITATION REGULATIONS

Differences exist among DMR, DPW, and the Rate Setting Commission (RSC) over the interpretation of existing state regulations governing maximum staff to consumer ratio in day habilitation programs. This problem has affected service delivery to some class members. These differences should be resolved as soon as possible to ensure that class members receive planned day services in a timely fashion.



#### D. SERVICE COORDINATORS' CASELOADS

The Office of Quality Assurance is pleased that DMR allocated 45 new service coordinator positions in 1987 to reduce excessive caseloads. However, this office is concerned that no new allocations were planned for this fiscal year despite the commitment to assign service coordinators to many new consumers.

- \* To ensure reasonable caseloads, the Office of Quality Assurance recommends that DMR establish a task force to set standards.

#### E. LICENSING SPECIALIZED HOME CARE PROGRAMS

Despite the existence of applicable regulations, specialized home care programs have never been licensed. The Office of Quality Assurance accepted interim monitoring measures but must now insist that specialized home care sites be fully licensed by November 1, 1988, or class members be moved to licensed programs.

#### F. PROGRAM COMPLIANCE WITH LICENSING STANDARDS

It is a major concern of the Office of Quality Assurance that deficiencies in too many community programs are not corrected in a timely fashion. While DMR does an excellent job of performing licensing surveys, enforcement mechanisms are inadequate. Amendments to DMR's licensing enforcement policy (#85-41) have been proposed, but not yet finalized.

The Office of Quality Assurance requests that DMR:

- \* Establish time frames for implementation of a revised policy;
- \* Report to this office on its efforts to accomplish this task; and
- \* Make additional resources available to vendors to correct identified deficiencies.

### III. CAPITAL AND HOUSING ISSUES

The court's decision to disengage was based, in part, on the state's commitment to: 1) complete the Housing Agenda (plan for developing housing in the community); and 2) several capital projects at the state schools. While some progress has been made, this office is very disappointed with the pace of movement towards full compliance. More than 250 people remain in non-compliant state school housing, and many capital projects are still experiencing problems. The state must concentrate its efforts to complete all capital projects and take swift and comprehensive action to accomplish this task.

#### A. FY89 CAPITAL BUDGET REQUEST

The Office of Quality Assurance is pleased that most of the capital projects included in the court's final order are identified in the Governor's House I Capital Budget request. Some items exist as part of a pool where they will compete with other projects for a limited amount of money. If the legislature enacts the current request, the administration must prioritize all projects called for in the court's final order.

#### B. HOUSING AGENDA IMPLEMENTATION

The state has fallen far behind in the implementation of its plan to provide suitable, community based residences to class members currently living at the schools in non-consent decree compliant buildings. This office is very distressed that despite concerted efforts from the Executive Office of Communities and Development (EOCD), the completion date for housing development has been pushed back from October, 1987 to December, 1989. Due to these delays, 226 class members remain in substandard buildings at Dever and Belchertown State Schools.

The Office of Quality Assurance recommends that the Governor direct the Executive Office of Human Services, the Executive Office of Communities and Development, and the Executive Office of Administration and Finance to take whatever additional steps are necessary to provide housing to class members in a more timely fashion. The following strategies should be considered:

- \* Declaring the completion of projects as an emergency;
- \* Creating more housing opportunities through vendor operated programs;
- \* Having EOCD serve as the direct developer rather than utilizing the Local Housing Authority (LHA) in any town where cooperation has not been forthcoming; and
- \* Making changes where possible in the placement plans so that programs opening in the next 12 to 15 months can serve more Dever and Belchertown class members.

#### C. STATUS OF PROPOSED BUILDING CODE FOR STAFFED APARTMENTS

A proposed code with modifications was approved by the Department of Public Safety (DPS). Currently, DPS is developing regulations and an implementation strategy with the cooperation of DMR. This office commends DPS for its development of this new code, and the Executive Office of Human Services (EOHS) for publicly stating that funds will be made available to cover the costs of bringing all staffed apartment programs into compliance.

#### D. SPACE AND GROUNDS COMMITTEES AT THE STATE SCHOOLS

Each state school has established a standing committee that is responsible for assisting the superintendent in planning for the utilization of space and helping to eliminate building deficiencies. These committees establish a legitimate internal mechanism for ongoing input from family members on issues relating to the use of space and facility conditions.

#### E. BELCHERTOWN STATE SCHOOL

- \* The Department of Mental Retardation requested funding in the FY89 Capital Budget to complete its plan for improvements in G Building and the cottages.
- \* The modernization of the electrical distribution system is almost complete - completion is projected for May, 1988.

#### F. MONSON DEVELOPMENTAL CENTER

- \* Additional out-of-building day program opportunities are still required to serve as many as 140 class members still receiving day services in their residential buildings. The Office of Quality Assurance recommends that the state determine what action it will take in this regard.
- \* Some work has been done on the project to provide a recreational area adjacent to Longview building. Once additional resources are identified to complete the project, work will proceed.

#### G. FERNALD STATE SCHOOL

- \* Greene Building remains unoccupied although it appears that the major impediment to occupancy, problems with the heating/ventilating/air conditioning (HVAC) system, may finally be resolved. The Department of Mental Retardation will be contracting with a company to service the HVAC system regularly. Fernald staff will monitor the system's climate control and maintenance, and will report to this office.
- \* The completion of Thom Building, an acute care medical facility, has again been delayed because the elevator shaft must be fire protected, and a commercial washer and dryer must be installed. The Department of Mental Retardation and the Division of Capital Planning and Operations (DCPO) should conduct a final review and report their findings to this office.



- \* Woodside/Brookside conversion is still in the design phase.
- \* A designer for the site work project (i.e., lighting, sidewalks, parking) has been selected and DMR is now prepared to proceed with direct management.
- \* A number of construction deficiencies remain in the "Package B" buildings. Work has begun on the non-emergency parts of this project with completion scheduled to be within 120 days.
- \* The "Package A" buildings continue to experience problems since their renovation back in 1983. The correction of window problems must become a high priority.
- \* Initial recommendations of a study to determine whether the food service building should be renovated or replaced suggest the renovation route. However, DMR and school officials disagree with the study's findings. The Division of Capital Planning and Operations has assigned staff to study this issue further and has asked the study designer to reconsider his findings. Final recommendations are due in three months. This must receive the highest priority to ensure that funding is requested in the FY89 Capital Budget.
- \* The Department of Mental Retardation has yet to identify and submit to the Office of Quality Assurance its long-term plans for providing a climate controlled environment for people with medical needs.
- \* The modifications made to the hot water system at Farrell Hall have not alleviated the problem. A new continuous flow hot water system is needed. The Department of Mental Retardation must identify funding and install the system as soon as possible.
- \* The Templeton boiler project is in the design phase. Timelines for completion need to be established.
- \* Heating and ventilation units for eleven cottages need replacement. The project is in the design phase and funding has been requested in the FY89 Capital Budget.

#### H. DEVER STATE SCHOOL

- \* The Department of Mental Retardation will repair the Fenton porch and will be studying the associated larger structural problems. Timelines need to be set.
- \* The Colton Hospital Building is insufficient to meet the health care needs of class members at Dever State School. A recently completed needs assessment has provided the foundation for developing final plans for an alternative.

The project is ready for the design phase, and funding for a design study and the design have been requested in the House I Budget.

- \* The site improvement project is substantially complete.

#### I. WRENTHAM STATE SCHOOL

- \* The new Raymond Hospital project is now substantially complete. The Department of Mental Retardation plans to take use and occupancy of this building by March 30, 1988.
- \* The site improvement project design phase is complete and work is scheduled to begin by the end of March, 1988.

#### J. PREVENTIVE AND CURRENT MAINTENANCE; FURNISHINGS AND EQUIPMENT REPLACEMENT

A continuing need exists in the schools and in the community to provide resources for ongoing maintenance and replacement of furnishings and equipment. This is a particular problem in old community programs and in the buildings renovated in earlier years at the state schools. This office supports DMR,s proposal to the Legislature that it be allowed to retain a small percentage of the state schools' medicaid revenue to fund the facilities' depreciation of plant and equipment. Mechanisms for community programs still need to be identified.

- \* The administration must establish ongoing mechanisms to ensure funding in this critical area.



## I. SERVICE PROVISION ISSUES

### **A. THE STATUS OF PERSONNEL REASSIGNMENT**

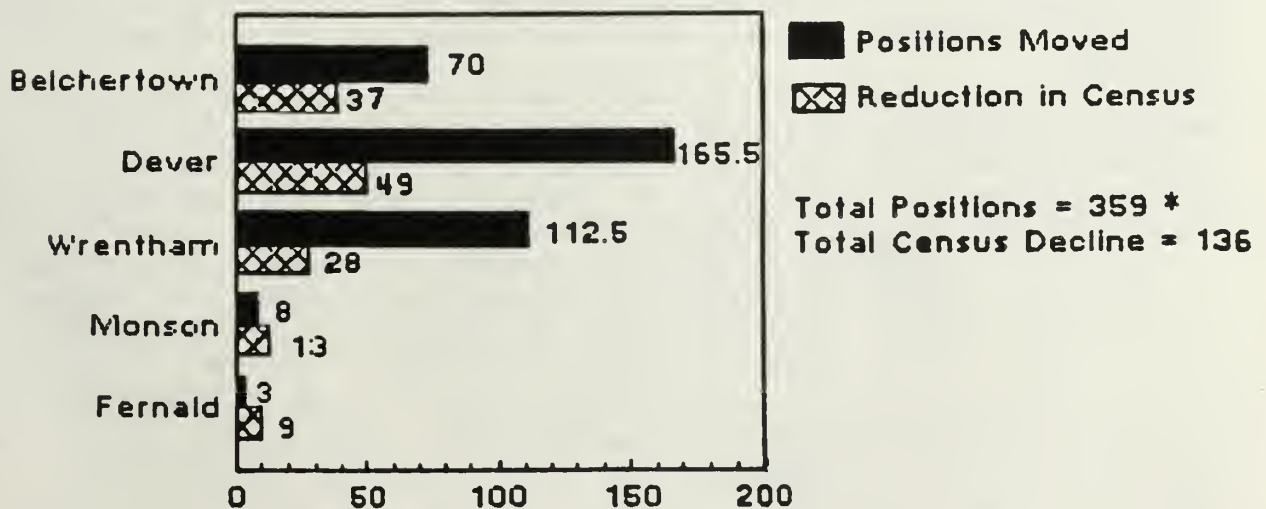
#### SUMMARY OF THE MOVEMENT OF POSITIONS FROM THE SCHOOLS

It is one year since the Department of Mental Retardation (DMR) received approval from the Health Care Financing Administration (HCFA) and the federal court to begin the reassignment of state school personnel to state operated community cluster programs. The full scope of this project will involve the relocation of some 1200 employees and/or positions to approximately 40 state operated residential programs. These newly renovated or constructed homes are fully accessible to physically handicapped persons and will house eight persons per program. About 366 class members will be served in these state operated programs. The placements represent a sizeable percentage of those to be made under the state's Housing Agenda (see Chapter III of this report for further details).

Chart A shows the number of positions reassigned under this program from April 1, 1987 to February 2, 1988, as well as the reduction in census at each school during that same time.

**CHART A**

#### **POSITIONS MOVED VS. CENSUS REDUCTION AT THE STATE SCHOOLS**



\* Approximately 25 of these positions have been reassigned to other schools or to DMR central office

Chart B provides a complete breakdown of positions reassigned in every category.

CHART B

NUMBER OF POSITIONS REASSIGNED FROM STATE SCHOOLS FROM 4/1/87 to 2/2/86  
(DATA BASED UPON POSITION TRACKING RECORD & INTERFACILITY TRANSFER RECORD)

<u>CATEGORY</u>	<u>WRENTHAM</u>	<u>DEVER</u>	<u>BELCHERTOWN</u>	<u>MONSON</u>	<u>FERNALD</u>
DIRECT CARE MRW	74	94.5	38		
NURSE PRACTITIONER			1		
LPN	11.5	24.5	9	2	
RN	3	2	2	1	
PROGRAM MGR	2	2		1	
QMRP	2	2	1.5		
PSYCHOLOGY	4	4	1		
PHYSICAL THERAPIST		1.5			1
SOCIAL WORKER	5		1		
RECREATIONAL THERAPIST	4	13	3		1
STENOGRAPHER			1		
MECH HANDYWORKER	1				
SR SUPERVISOR EDUC			2		
DAY CARE DEVELOP/SERV		10	4		
TYPIST	2	2	1		
TEL OPERATOR	1				
FOOD SERVICE	1		3		
LAB TECHNICIAN	1				
OCCUPATIONAL THERAPIST		5			
COOK			2.5		1
DOMESTIC WORKER	1				
SPEECH LANG PATHOLOGIST		3			
CLOTHING MGR		1			
MENTAL HEALTH COORD		1			
DIR CCM RESOURCE DEVELOP				1	
DIR REHABILITATION				1	
DIR ADAPT EDUCATION				1	
DIR CCM OPERATIONS				1	
	<u>112.5</u>	<u>165.5</u>	<u>70</u>	<u>8</u>	<u>3</u>

In addition to the 359 positions listed above, DMR has utilized an additional 129 Excess of Quota (EQ) positions to open eighteen programs. These EQ positions were provided by the legislature on a temporary basis to assist DMR with the initial phases of reassignment. They must eventually be replaced with permanent positions.

At the court's request, a process was developed to estimate the number of staff needed in each job category at the schools. The state could then determine the number that might be available for reassignment. This "Single Methodology" uses measures of consumer need to estimate the positions necessary for consumer care, and uses a variety of other criteria to estimate the positions necessary for jobs not involved with consumer care.

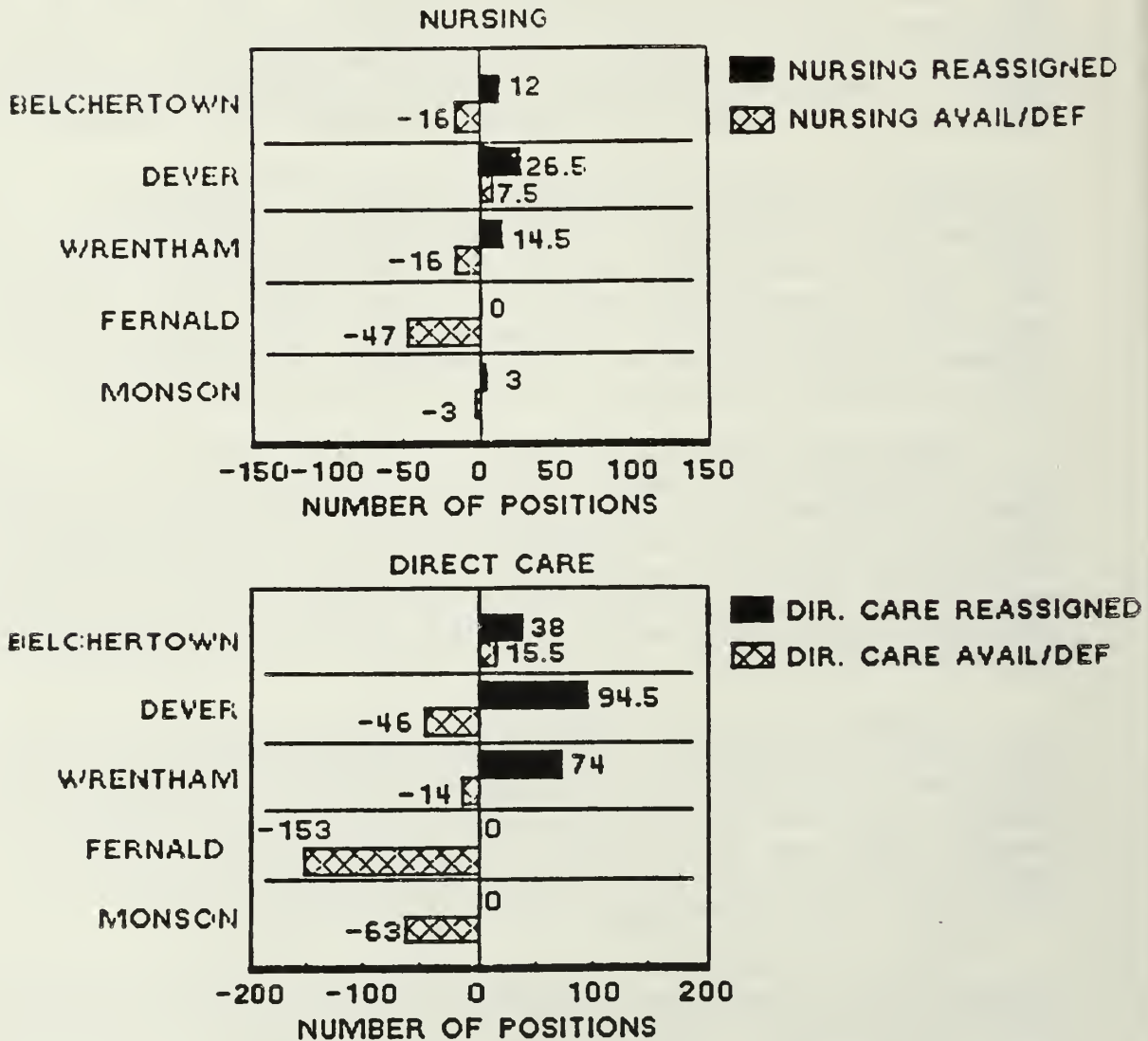
While the process of identifying positions for the first group of programs was relatively easy, it is becoming increasingly difficult for DMR to find positions at the schools that can be reassigned without undermining the quality of care. Yet, with 22 programs remaining to be opened, it is clear that many more positions must be reassigned. This leaves DMR with the dilemma of proceeding with the reassignment process while preserving high standards of care at the state schools.

Based upon the data derived from the application of the Single Methodology, Chart C (on the following page) illustrates this predicament quite graphically. It specifies how many positions have been reassigned to date in two key staffing categories: nursing, and direct care. The chart also reflects the number of positions in these categories that are either in excess or deficient, based upon the 1987 Single Methodology application.

A quick review of Chart C illustrates that in every case, the number of positions reassigned from Belchertown, Dever, and Wrentham State Schools surpasses the number considered to be in excess as determined by the Single Methodology. The methodology results indicate deficiencies in several staff categories at Fernald State School and Monson Developmental Center; thus few staff have been reassigned from these facilities.

This chart does not account for the fact that as class members have moved from Belchertown, Dever, and Wrentham, some of the staff who had been working with them have become available for reassignment. Nevertheless, it does make it clear that there is currently a shortage of available positions in certain categories necessary to proceed with opening state operated programs, and that insufficient staff are available at Fernald and Monson to meet the agreed upon standard. (The staffing problems at Fernald and Monson are discussed in the next section of this chapter.)

CHART C  
DIRECT CARE/NURSING POSITIONS REASSIGNED AND  
NUMBER AVAILABLE/DEFICIENT



The lack of sufficient numbers of reassignable positions in the proper categories was clear from the 1986 Single Methodology data and DMR has attempted to address this problem in several ways. Before any programs opened, a DMR consultant reviewed proposed staffing patterns for the clusters (groups of programs operated by a state school), and in several cases revised them downward. Staffing patterns and other critical program components were checked by the Department of Public Health (DPH) prior to program opening. In certain cases, DPH found that these revised staffing patterns were insufficient, and DMR agreed to increase them.



In another case, this office learned that the reduction of staff would limit the number of physically handicapped persons who could be successfully served in the program. One person, who had been a long-standing candidate for residency, was eliminated when staffing patterns were changed. This office intervened, requested that DMR reinstate the candidate, and obtained a commitment from DMR that, in the future, previously identified candidates would not be excluded on this basis. This commitment is extremely important given the rarity of fully accessible supervised residences. In the past, physically handicapped people have often been overlooked as candidates for community placement, and this trend must not continue.

The extension of the temporary EQ positions is another solution proposed to increase available staff resources. The legislature originally required that these positions be terminated in December, 1988; DMR then sought, and was granted, an extension until June, 1988; DMR has now sought another extension of this termination date until June, 1989. The extension would be clearly beneficial to the reassignment process and this office supports this goal.

The Department of Mental Retardation has also reassigned a few vacant positions in excess of the Single Methodology ceilings under the rationale that in the current economic climate these positions could not be filled anyway. This office is very concerned with this practice for several reasons. First, it deviates from the Single Methodology. Second, it may inadvertently create an incentive for maintaining vacant positions at the state schools to the potential detriment of the services being provided. Third, if current economic patterns alter, and vacancy rates are reduced, there will not be positions there to fill. The Office of Quality Assurance must insist that DMR remain within the boundaries of the Single Methodology.

The most hopeful means of providing sufficient staffing lies in the examination of those positions not directly linked to consumer care. The Department of Mental Retardation is analyzing the measures of productivity associated with these jobs in an effort to refine the methods that determine what positions could be reassigned. It is expected that refinements of this type will be formally proposed in the near future.

Of course, DMR's analysis, as well as any proposal for modifying the methodology, must be reviewed and approved by HCFA before it is implemented. Obtaining necessary approvals and converting position titles will take many months. In the meantime, there is great pressure to find positions so that programs can open and accommodate people now living in inadequate environments.

To ensure that quality care is maintained at the schools, while at the same time allowing for the continued opening of cluster programs, the Office of Quality Assurance strongly recommends that DMR seek the establishment of additional

temporary positions. This office is convinced that additional resources are required, at least temporarily, to effectively complete the reassignment process. Once everyone has moved and all non-compliant buildings (those buildings not meeting consent decree requirements) have closed, those additional resources may not be needed. At this juncture, however, this office considers them critical to the success of the plan.

In addition, the Office of Quality Assurance recommends that DMR develop a long range plan that specifies the positions needed to staff cluster programs, and to reduce staff deficiencies. Such a plan should identify when positions are needed, and where they would come from. It is only through the development of such a plan that DMR will be able to determine the resources required to effectively implement reassignment. For the sake of all the class members currently waiting to move from substandard housing, and those receiving less than adequate service, it is crucial that solutions are developed immediately.

#### STATUS OF RESPONSE TO IDENTIFIED STAFFING DEFICIENCIES

Implementation of the Single Methodology in 1986 identified serious staffing deficiencies at Fernald and Monson. Current figures continue to show a problem of the same magnitude. The most recent figures (July, 1987) for Fernald show a shortage of 153 direct care staff and 47 nurses. Factoring in excess positions in other categories, a total deficit of 178 positions remains. At Monson, the figures show a total deficit of 104, with 63 of those in the direct care category.

This shortage is particularly critical at Fernald, where the active treatment rate of only 77% is the lowest it has been in some time, and where the overall vacancy rate has exceeded 6% for several months. Serious concerns persist regarding the adequacy of staff available for daily supervision of class members and the implementation of their programs.

This office has repeatedly expressed great dissatisfaction with DMR's failure to eliminate these deficiencies. The state agreed to abide by results of the Single Methodology. These results showed deficiencies requiring correction as well as identifying excess staff. Abiding by the results requires as strong a commitment to reduce identified deficiencies as it does to reassign staff determined to be in excess.

In November, 1987, DMR agreed that by January, 1988, it would develop a plan that would specify how and when it intended to resolve these deficiencies. That plan was just submitted as part of its six month progress report. In summary, the plan projects that by March, 1990, through a combination of the reassignment of positions, the placement of class members, and the conversion of existing positions, that staff deficiencies can be reduced at Fernald by 163.5 positions, and at Monson by 91.59



positions. The Office of Quality Assurance is concerned that these figures seem to be based upon flawed assumptions. In addition, this office has some grave concerns regarding the timetable identified for implementation.

A substantial number of positions at both facilities is projected to become available during this time period as a result of community placements (78 positions at Fernald, and 70 positions at Monson). For that to occur, at least five factors must be present:

- \* The census must not increase;
- \* Anyone admitted cannot have staffing needs that are more intensive than those of persons who have been placed in the community;
- \* There will be no reassignment of positions from these schools in any of the deficient position categories;
- \* The staffing needs of the class members remaining at the schools will remain constant; and
- \* Scheduled placements will occur in accordance with current timelines.

Given what is known about several issues, including: the likely future needs of aging class members not scheduled for placement; the planning that is currently taking place regarding serving persons in the state schools with additional mental health needs; the problems that DMR has had historically with making placements on schedule; the staffing demands for future cluster programs; and the recent trends in admissions to these facilities, it is very unlikely that any of the above assumptions will in fact bear out.

Finally, even if the above assumptions did turn out to be realistic, the overall time frame for addressing the deficiencies, particularly at Fernald is much too long. The figures indicate that it would be almost another year before any real progress is made towards addressing the problems. Adding the year that has already passed since HCFA's approval of the implementation of the Single Methodology, more than two years will have passed before any substantial relief is provided at that facility.

While this office does recognize the efforts that have been made, the fact remains that current figures still identify substantial deficiencies at both schools, and plans for their remediation are still uncertain. As discussed in the earlier section on staffing of cluster programs, this office is convinced that the only way DMR can properly staff its state operated community programs and resolve these staffing deficiencies is to obtain additional temporary positions until more buildings are closed, and there is greater access to positions.

The Department of Mental Retardation has not fulfilled its obligations in this regard and its current plan is not considered by this office to be an adequate response. The Office of Quality Assurance recommends that the Secretary of Human Services direct DMR to immediately submit a more acceptable plan for addressing the staffing deficiencies at Fernald State School and Monson Developmental Center.

#### IMPACT OF MOVEMENT OF PERSONNEL ON SERVICES AT THE SCHOOLS

To determine what impact, if any, the reassignment of personnel has had on services at the state schools, the Office of Quality Assurance has carried out several activities, including reviewing: comprehensive surveys conducted by DPH; complaints brought to its attention; and findings of on-site visits conducted by staff from the Office of Quality Assurance.

The surveys clearly indicate that since last year, some problems have developed at both Dever and Wrentham (the schools from which most positions have been reassigned). According to verbal reports from DMR and DPH, progress has been made in remediating problems at Dever State School.

In the case of Belchertown State School, the 1987 DPH survey identified four unmet standards in comparison with only two in 1986. However, the deficient areas are not related to personnel reassignment. In fact, staffing issues cited in 1986, such as "excessive floating" and "frequent turnover", were not cited in 1987.

The surveys at Dever State School, however, pointed to very serious problems. The April, 1986 DPH survey indicated that Dever had met most federal standards of care. The March, 1987 survey showed numerous unmet standards. While the problems were pervasive, they were not clearly linked to personnel issues. However, the August, 1987 survey revealed a continuing downward trend in the quality of care (nine standards unmet), and this time it was clear that numerous deficiencies were related to staff turnover, vacancies, and floating. Some excerpts from the survey document demonstrate the types of problems that developed:

"In units V and VI internal transfers were made without following a formal procedure. There was no facility policy procedure to ensure consideration of clients' welfare. Ward transfers resulted in basic and far reaching changes for clients." (page 10)

"In Unit VI: Due to the need for all direct care staff to be utilized for minimum staffing coverage over the past 3 months, there has been a lack of inservice training to update staff competency. The present system to identify training needs of direct care staff has not been effective due to inconsistent direct care supervision." (page 17)

"In Building 10-2: Ward C: No arrangements had been made to carry-over ADL [Activities of Daily Living] objectives, since a 5/87 vacancy, and in Building 10-1, Ward B, no ADL data had been kept since a 3/87 vacancy." (page 19)

"...Due to floating and overtime, staff were not consistent in providing services or recording client responses. In addition, direct care staff were being diverted from these primary responsibilities by excessive housekeeping duties on the weekend." (page 19)

"In unit II: Although the unit met the Federal minimum staff to client ratios, during the time of survey on a daily basis, the unit had to "drop down" non-direct care staff, e.g., aides, supervisors - into direct care roles in order to meet its minimum staffing as established by the team." (page 23)

"In Unit VI: Direct care staff were not sufficient in number, were not adequately trained and were not supervised consistently in order to carry out mandated programs, e.g., in order to meet minimum staffing coverage during the week of July 18, 1987, 260 hours of overtime and 608 hours of floating were necessary. Professional staff were also utilized to provide direct care coverage which impacted on direct service delivery." (page 24)

Several concerns noted on the survey were issues that had been raised with this office as well. In one situation some visually impaired men were transferred to Building 10-1. The ward they were settled into was over-crowded and had insufficient furnishings and leisure space. This office intervened; the ward was renovated and sufficient furniture added.

Since that time several concerns have surfaced with respect to proposed internal transfers of class members. These issues were directed to the Dever State School Space and Grounds Committee and to DPH for their consideration, and as of this writing are still under consideration.

Although it is clear that personnel reassignment played a role in these deficiencies, it is not clear how many problems are attributable to fewer available staff, as opposed to problems with management, staff attitude, and supervision of personnel. It is encouraging to note that DPH revisited Dever in December, 1987, and found that progress had been made in correcting these deficiencies. Department of Mental Retardation leaders must be vigilant in their efforts to maintain quality of care throughout the reassignment process.

The January, 1987 DPH survey conducted at Wrentham State School revealed two standards unmet and neither seemed linked to the activity of reassigning personnel. The survey completed in January, 1988, however, showed four critical standards unmet, and the evidence presented clearly linked the problems with staffing.



Further review is necessary to determine if the issues cited such as: staff vacancies and turnover; overtime coverage necessary to meet nursing needs; and failure to provide certain Individual Service Plan (ISP) related services were directly associated with personnel reassignment activities.

To better monitor the impact of reassignment on the state schools, the Office of Quality Assurance recommends that DMR create a special committee of persons with expertise in quality assurance. This committee, which should include among its membership persons who are not state employees, would conduct activities such as:

- \* Examining the relationship between any deficiencies cited and the reassignment of personnel, and making appropriate recommendations;
- \* Making regular and frequent visits to the schools to ensure that quality care is occurring; and
- \* Assisting the superintendents to address problems that might arise due to reassignment.

#### EFFECTIVENESS OF QUALITY ASSURANCE PROCEDURES ESTABLISHED FOR PERSONNEL REASSIGNMENT

In conjunction with HCFA's recommendations and the court's orders on personnel reassignment, DMR has developed a variety of systems to ensure that quality care is maintained throughout the opening of new programs and the reassignment of personnel. The data generated by these processes is made available to this office and to DPH to monitor reassignment activities.

#### Pre-Program Opening Checklist

This mechanism provides DMR with a vehicle to determine whether or not all program elements are in place prior to a program's opening. Compliance with the Pre-Program Opening Checklist has been good. This is particularly important for the staffed apartment programs that are not subject to the DPH Title XIX Pre-Operational Survey requirements.

#### Service Readiness Assessment

This tool was developed to ensure that staff reassignment would not negatively effect quality of care in locations at the schools where staff were coming from. Adherence to the Service Readiness Assessment (SRA) requirements has not been good. The data is sometimes inaccurate and submitted so late as to be of marginal benefit for the purpose it is intended.



The Department of Public Health has had difficulty in using the SRA as a preventive tool - that is, predicting from the document where problems may arise and acting upon that. This may be due to lack of staff to perform the required analysis and to complete on-site visits where necessary. It may also be a result of confusion over what DPH's authority is in the reassignment process.

The quality assurance plans developed by the state in accordance with the court's August 18, 1986 order are quite specific with regard to the SRA. In the state's "Report on Quality Assurance Procedures to be Used During the Reassignment Process," submitted to the Court Monitor on 10/14/86, it specifically states that DPH must approve the SRA before staff can be reassigned. It is essential that this critical monitoring step be properly carried out, and that DPH perform its role in this regard. Despite the fact that DPH's role in personnel reassignment differs from its responsibility under Title XIX, the state has committed this agency to implement this important monitoring task.

#### Position Tracking

The Position Tracking form was created to ensure that all parties are informed of the location of reassigned positions. Despite a slow start in providing this information, DMR is now submitting it on a monthly basis. Even though this is a computerized process, the data has not been compiled in any summary fashion. The Office of Quality Assurance recommends that useful configurations be introduced, such as cumulative totals of staff reassigned in each staff category by school. These figures could then be compared with Single Methodology ceilings.

#### Service Provision Assessment Report

The parties felt it was essential to monitor the adequacy of services provided to class members after moving to community programs. The Service Provision Assessment Report (SPAR) performs this very important function. The Department of Mental Retardation has completed a SPAR for each relocated class member. This process documents any needed service not provided to class members, and is summarized quarterly. The patterns of care suggested by the results will be discussed in the next section of this report.

## QUALITY OF CARE IN NEW STATE OPERATED PROGRAMS

The Office of Quality Assurance is pleased to say that visits to these programs have uniformly brought its staff into contact with very competent and caring personnel who had elected a cluster assignment and were not regretful of their choice. In most programs, there was a feeling of growing team spirit among the staff and a familial feeling toward the people they serve. It was apparent that great care and thoughtfulness had gone into the choice of furnishings, and the result was quite pleasing.

Physically, the accommodations are far superior to the non-compliant living environments at the state school, and for the most part, are considerably more home-like than most renovated buildings as well. Private and semi-private rooms are the norm with tasteful furnishings and comfortable appointments throughout, such as outdoor decks and patios.

It is difficult at this time to make comprehensive statements about the quality of life and care in the new state operated community programs; first, only six of the 18 programs currently open have been certified against specific standards of care and; second, although staff from this office have been to most sites, visits were not frequent enough to make generalizations about care. However, certain patterns of care have emerged from the sample that has been surveyed.

### Survey Results

A consistent theme in the DPH surveys is the failure to adequately separate the day to day operations of the cluster programs from the larger institution in ways that are beneficial. Many policies and procedures that make sense in the context of a larger institution do not make sense in a small cluster program, and result in class members having less control over daily routines and fewer opportunities to learn life skills. For example, while each of the new programs has its own kitchen, develops its own menu, and, ideally, purchases groceries and prepares its own meals, problems arise when these processes are subject to institutional procedures that were not designed for smaller scale operations. This is complicated even further when the program is at some distance from the larger institution.

In the case of meal preparation, the purchasing procedures are the obstacle. The institution may require the program staff to use vouchers or charge cards to purchase food. They may be required to use a supermarket not convenient to the program or they may purchase foods in bulk. Such practices reduce or eliminate class members' opportunities for learning various community skills such as food shopping and currency.

There are also indications that institutional procedures delay access to class members' funds for as long as two weeks. Many of the residences are located near community resources such as movie theatres, drug stores, shopping malls, etc. Such locations would promote more spontaneous and frequent trips than were possible in the institution; however, spontaneous shopping trips are not likely if access to personal funds takes that long. Surveys found that some state school employees, not involved with cluster activities, were named as the responsible person for important routine activities such as "infection control" at the cluster site. These patterns indicate that more planning must be directed toward clearly defining and separating the operations and responsibilities of the cluster operation from those of the institution.

In several DPH surveys it was noted that direct care staff were not involved with team planning meetings. The more home-like environment of the new programs is a perfect context to encourage deeper connections between individuals and staff. Greater involvement is more likely to occur when direct care staff feel validated and empowered in their role. However, these aims are less likely when direct care staff are not encouraged or permitted to participate in planning meetings. Such practices diminish the spirit and intent of the revised ISP process and tend to invalidate the knowledge of these workers who may know the consumer better than any other staff. This office encourages more direct care involvement as a priority in all planning and service delivery contexts.

### Day Services Issues

Several issues have developed regarding day programs. One problem mentioned in several surveys was the failure to include progress notes from day programs in the individual's record. In other cases, consumers have been forced to delay moving into their new homes in four different cluster sites due to problems with day programs.

In one situation, the day program planned for two men by the Local Service Center (LSC) proved to be insufficient without extra staff to meet their needs. More than six months passed before the problem was resolved and the men could move to their new home. In still another case, the vendor decided not to provide the service as originally agreed upon and an alternative service provider has not yet been found.

Most day programs do not contract directly with the state operated community residential program for the provision of services but with the Area Office/Local Service Center. Therefore, the power to set performance standards for the day program lies with the local service center instead of the state school. This office anticipated problems with the coordination of service resulting from the separation of control of day and residential services. This issue was also of great concern to the plaintiffs and to HCFA when the state first proposed its



cluster management plan. In response, DMR modified its plans by at least making the Qualified Mental Retardation Professional (QMRP) responsible for coordinating all aspects of care even though the local service center would remain as the contractor.

For all practical purposes, the clusters and local service centers are two completely separate organizational systems with separate fiscal structures, separate hierarchies of employees, and few established protocols for communication, coordination, and cooperation regarding the needs of the people living in the cluster programs. This makes it very difficult to have a systematic way of ensuring effective day program coordination and planning. It has been established that area service coordinators will act as the liaison among cluster, day program, local service center staff, and consumer; and that the cluster QMRP will be the primary case manager.

To reduce problems with the coordination of services, it is recommended that the following occur:

- \* QMRP's must be made fully aware of their overall responsibilities for cluster residents, and service coordinators must be fully advised of their responsibilities as liaisons;
- \* Protocols must be established that explicitly describe the type and frequency of service coordinator contact with cluster residents, and QMRP contact with day programs and service coordinators;
- \* Schedules must be established for periodic meetings between cluster and local service center staff to discuss concerns regarding day programs and other relevant issues; and
- \* Vendor contracts must include requirements regarding communication with cluster personnel and service coordinators.

#### Use of Generic Services

People living in cluster programs receive needed services either through cluster employees, or through generic providers. A "generic service" can be described as any service available to the public at large.

In the cluster program, certain services, such as primary medical care, were planned from the beginning to be provided by generic providers. In other cases, the inability to recruit certain necessary personnel, such as physical therapists, occupational therapists, and speech therapists made it necessary to hire these services on a consultant basis.



There are pros and cons to each form of service delivery. The use of generic providers enhances the level of integration of individuals into the fabric of the local community, and provides a greater range of choice and individualization in the arrangement of services. On the other hand, generic providers frequently have little knowledge or experience with people who are considered mentally retarded. This deficit can result in poor treatment. Another problem is the reluctance of some providers to accept medicaid payments, an attitude that can lead to discriminatory treatment.

This office does not favor one service delivery model over another, but encourages DMR to make extra efforts in four important areas when using generic services by:

- \* Monitoring the quality of care provided;
- \* Educating providers regarding mental retardation in general and about the specific needs of the people who will be served;
- \* Assisting providers with third party billing requirements; and
- \* Ensuring that a high level of communication exists between the provider and the individual's ISP team.

Wrentham State School is using an innovative plan to assess the quality of health care provided by generic providers. Children's Hospital (the contracted provider for health services at Wrentham) is developing an audit tool that will provide indicators of the adequacy of primary medical care being provided to those who have moved from the schools.

Activities of this nature and those recommended above will promote good services for cluster residents and assist the generic service provider in gaining competence in service delivery to persons labeled mentally retarded.

#### Proposal to Expand the Dever Cluster

In 1986, prior to the finalization of community cluster plans, a proposal was made by DMR to include two existing staffed apartment programs in the Dever cluster. These programs were not part of the original cluster design. The concerned parties received assurances that sufficient resources would be available and thus agreed to this proposal.

The two programs operated by Dever State School are located in Taunton and serve a total of five class members. Historically, the programs have not had sufficient resources because they are not in the main stream of either the institutional or the community service system. Inclusion in the cluster was presented by DMR as a solution to this long-standing problem.

Recently, staff from this office spoke with cluster managers and visited one program site to determine current conditions. It is evident that these programs are not yet part of the cluster. They do not appear on the Dever cluster organizational chart. Moreover, program consumers are neither assigned to the caseloads of cluster QMRP's or resource team staff, nor do they receive regular services from them.

The services provided to the class members by resource team staff are done so only on an "as needed" basis, usually in cases of extreme need. Criteria of need and referral protocol have not been established for these cases. It was reported during the visit that an area based service coordinator assigned to the program in June, 1987, had yet to meet the people living there six months later.

Despite the presence of a committed and caring director and staff, those aspects of the physical facility not under their control were extremely deteriorated because the landlord had failed to maintain the property. The programs are neither certified by DPH nor are they licensed by DMR; they are not subject to even minimal standards and this is unacceptable. Also, these programs do not have a vehicle assigned to them or sufficient access to transportation.

Immediate efforts must be made to provide services and living conditions that meet consent decree standards. This can be achieved by either:

- \* Including these programs fully into the cluster and locating adequate and comfortable housing (subsidies will be necessary because peoples' incomes are insufficient to support an adequate home along with an adequate standard of living); or
- \* Contracting with a private provider through the local service center to render the necessary services.

## **B. MEDICAL ISSUES AFFECTING THE QUALITY OF CARE**

### **PROPOSED REGULATIONS REGARDING ADMINISTRATION OF MEDICATIONS**

In November, 1987, DMR and DPH jointly issued draft regulations concerning "medication administration" for public comment. These regulations are intended to permit unlicensed personnel with appropriate training and supervision to administer medications to people living in most community programs.

Presently, it is common practice for untrained, unlicensed non-medical staff to dispense medications to people living in community programs. This is not in conformance with current regulations. The Office of Quality Assurance is concerned with the lack of significant safeguards in this critical area of health care. According to DMR, fiscal resources will be necessary to at least print and distribute training manuals, fund one RN/trainer position in each of the six DMR regions, and ensure staff release time for training sessions. These financial commitments are not included in the House I Budget.

Even if the RN/trainers are allocated, it is not certain that six will be enough to meet the training demand. It is DMR's vision that these six trainers will train licensed medical staff at the local service level who can then train program staff. The Office of Quality Assurance's major concern regarding this plan is that not every area office (local service center) employs a licensed medical person (RN, LPN, nurse practitioner or physician). In such areas, ongoing medical supervision of the recently trained unlicensed personnel would not be possible. This important matter must be addressed as the regulations near completion.

This office favors the inclusion of trained health care personnel in each Local Service Center. The benefits of having health care consultants available at the local service level would reach far beyond their role in training and supervision of medication administration. Such persons make tremendous contributions when coordinating medical services between providers and those persons who have multiple health needs. Due to the dispersed nature of generic services in community settings and the lack of knowledge about persons with mental retardation, it is not uncommon for medical care to be fragmented and less than optimum. Health care coordinators can make a great difference. The Office of Quality Assurance recommends that each local service center provide this service to its consumers.

More than four years have passed since the initial drafting of the medication administration regulations. It is distressing that the status quo still prevails in this important service area.

The Departments of Mental Retardation, Mental Health, and Public Health are presently synthesizing issues from the public hearings to produce a final draft. They did not meet their previous goal of issuing the regulations in 1987. The Office of Quality Assurance strongly urges these agencies to meet their present goal of producing and promulgating the medication administration regulations in the second quarter of FY89.



## CONTROLS ON PSYCHOACTIVE MEDICATIONS

Six months ago, this office reviewed DMR's efforts toward implementing the Rogers v. Okin decision which stipulates that certain protective procedures must be followed when psychoactive medications are recommended. At that time, it was clear that community consumers did not receive these protections and that Monson Developmental Center had lagged in its implementation of this important decision.

These standards have not yet been implemented in community settings. This office recommended in its last report that DMR examine the obstacles to implementation and develop a plan to meet these requirements. These initiatives have not been pursued.

It is critical that consumers in community residences receive adequate protections when powerful drugs are prescribed. Data on the patterns of drug use in DMR's community programs throughout the state is unavailable but based upon data available on similar groups, frequent use of prescription drugs is likely to be substantial. In a recent study of the psychoactive drugs prescribed to a sample of 1,389 persons in community supervised residential settings in Southwestern Ontario, it was determined that 40% of the residents received psychoactive medication compared with 17.7% in the general population. (Gowdey, C.W., Zarfas, D.E., & Phipps, S. (1987), Audit of Psychoactive Drug Prescriptions in Group Homes, "Mental Retardation", 25, 331-334). Given the potentially harmful side effects of these drugs, the frequency of use, and the relative inexperience of these consumers in self advocacy, it is mandatory that this matter receive immediate and comprehensive consideration.

This office is now pleased to report that a far more aggressive implementation is under way at Monson Developmental Center. These efforts were hampered, however, by a four month hiatus when Monson had no psychiatrist on staff, but this problem has been resolved. At this point there are seven "orders" in place with approximately twenty remaining to be done. Special recognition should also go to Monson for establishing a "Psychotropic Utilization Review Committee" (P.U.R.C.) for the cluster programs. Such committees are an extremely effective safeguard in this critical health care area.

It should be noted that in certain situations, there have been problems associated with persons' being withdrawn from these medications. Department of Public Health surveys at several state schools suggest that some people who benefit from medication have been withdrawn from these drugs under the Rogers v. Okin procedures, and have suffered deterioration as a result. It is critical that attention be given to this process.



The Office of Quality Assurance recommends that to safeguard the health and safety of class members, several actions in this area must be taken including:

- \* A review of the circumstances of those consumers cited by DPH as having problems;
- \* The provision of a status report of Rogers v. Okin implementation at each state school;
- \* The provision of an implementation plan of the Rogers v. Okin decision for community based programs; and
- \* Consideration of the use of P.U.R.C. committees in other clusters and community settings.

#### C. EFFORTS TO SERVE CLASS MEMBERS IN NURSING AND REST HOMES

The Office of Quality Assurance reported in August, 1987, that despite policies requiring increased contact with class members residing in nursing homes, DMR had responded inadequately to their unmet service needs. Many of these persons were abandoned years ago to the custodial care of nursing homes and have lived without many of the supports and opportunities that are now provided at the schools and in community residential programs.

This office receives thorough documentation through quarterly reports about the patterns of need among the 200 class members in these homes. These reports make it clear that while many support services are now being provided, the most critical needs (the provision of day programs and alternative homes) remain unmet. In the past three years, there have been a few random placements out of nursing homes and a small number of persons have obtained day services. However, no concerted effort in this area has been made until this year. Nine persons are currently scheduled to move to new homes, and some of the 37 persons scheduled to receive day programs have begun to do so. This office places the highest priority on the execution of these plans before the end of this fiscal year. These class members have waited far too long as it is.

This office is pleased to report that there is \$750,000 earmarked in the FY89 House I Budget request to provide residential or day services in the next fiscal year to the other 35 class members identified as still needing these services. Every effort must be made to secure these funds and to place these people as soon as possible.

To prevent creating a new class of mentally retarded persons inappropriately served in nursing and rest homes, government leaders must develop the capacity to support aging or temporarily disabled persons in their own homes. This will require developing innovative program models, implementing recently revised building codes, and restructuring reimbursement regulations that favor institutional care over home-based support. The Department of Mental Retardation must act rapidly.

In the current venue, many persons in residential programs who have become temporarily or permanently less capable than before are being placed in nursing homes. Unfortunately, the gains that will be made by moving nine people out this year have already been offset by the admission of other mentally retarded persons to nursing and rest homes in 1986 and 1987.

#### D. PROBLEMS WITH RECRUITMENT AND RETENTION OF STAFF

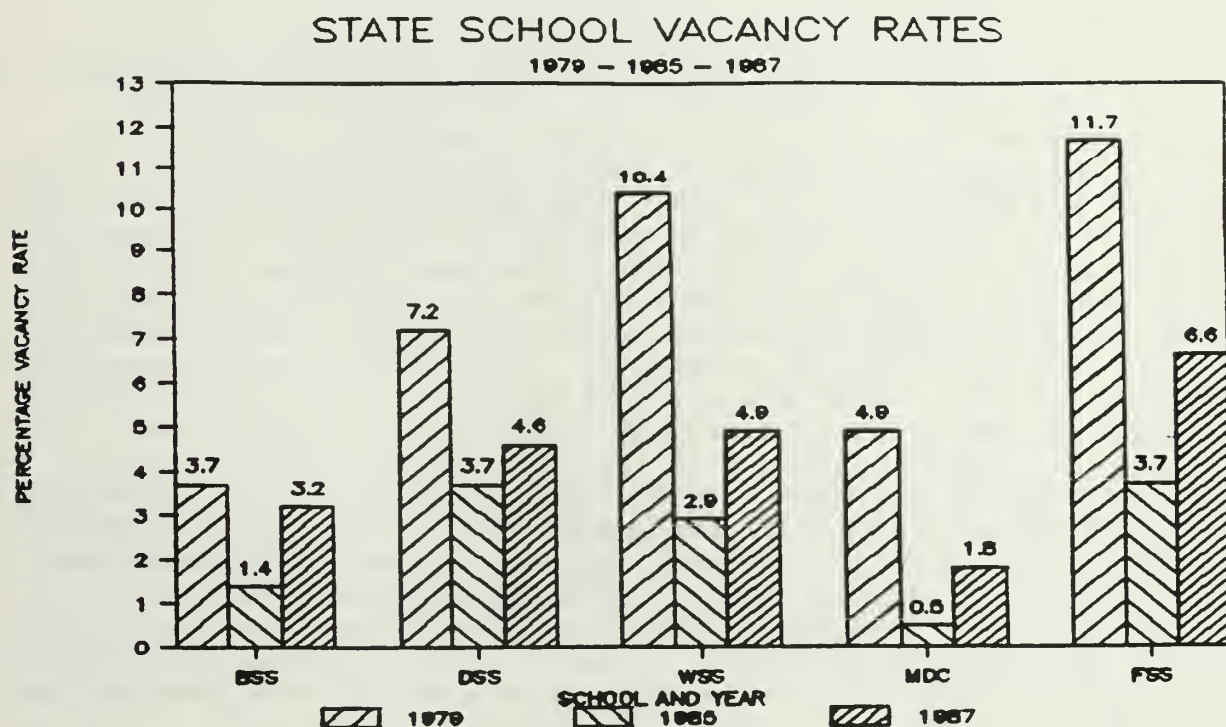
The growth and expansion of the Massachusetts economy has resulted in one of the lowest unemployment rates in the country. Unfortunately, this good fortune has contributed to serious recruitment and retention problems for jobs in the human service sector of the economy.

Staffing problems have existed in community programs for several years. Vacancy rates in excess of 15 to 20 percent have not been unusual, and annual turnover rates often run from 50 to 75 percent. In an effort to address this problem, both cost of living and parity dollars have been appropriated over the last several years. The Department of Mental Retardation states in its recent report that a minimum salary "floor" of \$14,500 was set for direct care positions this year and that the average full time equivalent salary for direct care workers is now \$15,358. However, salary levels for many community staff have been so low in comparison to other types of jobs that they will remain non-competitive even with the influx of these resources.

There are many indications that conditions relative to staffing stability have reached crisis proportions. Turnover and vacancy rates remain high, dependence upon temporary relief staff continues to increase, and recruitment of qualified staff is becoming increasingly difficult. It is no longer enough to provide installments of parity money to private providers on a yearly basis as a means of alleviating the problem.

A similar problem is developing at the state schools as well. Until recently, vacancy and turnover rates were relatively low in comparison to the late 1970's. With salary levels considerably higher than in most community programs, state schools have had less difficulty attracting qualified individuals. In fact, to compete effectively in the labor market, providers have tried to bridge the gap in salary levels of their workers and those of state employees. Those state

salaries, however, are no longer sufficient to attract enough qualified personnel to the schools. This is particularly true among the professional staff categories of nursing, psychology, occupational therapy, physical therapy, and speech therapy. However, recruitment problems are beginning to occur in the direct care categories as well. The graph below demonstrates the magnitude of the problem at the schools by providing a comparison of vacancy rates at three points in time over the last nine years.



While vacancies are not as high as they were in 1979, they are considerably higher than just two years ago. This is an extremely disturbing trend that must be reversed if the state ever expects to maintain quality services at the facilities.

In addition, the staff that are being hired at the schools and in the community tend to be less qualified than candidates in the past. Many community providers have had to lower their minimum qualifications in order to fill positions. Also, the state schools have had to offer English courses to new employees who do not read or write sufficiently to work with class members' records.



To help illustrate the impact that this crisis is having on the quality of care, one can refer to the status of service delivery in the community ICF's/MR. This office has been reviewing community ICF's/MR survey statements by DPH to determine the extent to which this problem is affecting services to class members. During the past nine months, this office has received 14 survey statements noting standards not met due to staff vacancies or frequent turnover. This represents 23% of all ICF's/MR in the state. Citations included inadequate coverage, poor Activities of Daily Living (ADL) training, non-provision of certain professional services, and inadequate nursing services.

Unless extraordinary and immediate efforts are made to resolve this crisis, the serious problems developing in both community and institutional settings will worsen considerably. The solution is complex and costly. At a minimum, it will require substantial adjustments in pay scales for both direct care and professional workers. Salary levels will need to be raised to a level that will both compete in the marketplace and be attractive enough to draw people into the field. Raising salaries alone, however, will not solve the problem. Many other market sectors currently offer not just higher salaries, but better working conditions, more opportunities for advancement, and more extensive fringe benefits. In addition, sophisticated marketing efforts are often used to highlight these advantages. Much more emphasis must be placed on these non-wage areas.

This problem is receiving special attention from leaders in state government. The Cabinet Level Education and Employment Council, composed of the highest ranking officials from various state agencies including Labor, Education, Human Services, Consumer Affairs, Communities and Development, and Economic Affairs, has been meeting for a year. Their efforts are directed towards seeking strategies to ensure that people needing work get jobs and that there is an adequate labor force in the Commonwealth. The Human Services Jobs Task Force, a sub-committee of the intersecretariat group, is examining how the problems of recruitment and retention of human service personnel can be resolved. Among the issues being pursued are coordinated recruitment efforts, increased educational opportunities, and a better connection with the state's Employment Training Choices program.

The Nursing Recruitment Task Force was created by DMR in May, 1987, and has been attempting to address the very serious nursing recruitment and retention problems at the state schools. Among its major accomplishments to date is a series of recommendations regarding both salary and other benefits to be included in the Massachusetts Nurses' Association contract. It appears that many of these may be incorporated. The task force has also recommended several new recruitment activities and is pursuing possible ways of restructuring nurses' roles to more clearly establish a professional environment.



Continuing such state directed strategies and developing additional remedies is absolutely necessary since the problem stems from the systems and structures within a human service labor market that is primarily government sponsored. To stabilize the staffing situation in community programs and at the schools, full public attention must be garnered. The seriousness of the problem must be publicized and all the resources necessary to develop and implement solutions must be brought together.

#### E. ADMISSIONS/READMISSIONS ISSUES

##### ADMISSIONS/READMISSIONS POLICY DMR #87-3

This office is pleased to report that on December 8, 1987, DMR formally issued Policy #87-3, Admission/Readmission Policy to the State Schools and Regional Center. The policy was developed in response to the court's final order and is the result of input from many divergent points of view. While policy formulation on this controversial issue took much longer than expected, DMR should be commended for the open nature in which this document was formulated.

According to the policy, only two types of admissions/readmissions will be considered: 1) Emergency Short-Term admission for 30 days or less if "... there is reason to believe that the absence of care or supervision creates a serious or immediate threat to the health or safety of the individual or others"; and 2) Longer Term admission/readmission for an individual whose needs cannot be adequately met in a setting other than a state school. Such admissions are planned in accordance with the Individual Service Plan (ISP) process.

The following are conditions under which a request for admission/readmission will be considered:

- \* "Admission to any state school/center is restricted to persons labeled mentally retarded, who are 22 years of age or older, and who reside or has a parent or guardian who resides in the Commonwealth;
- \* No new admissions will occur to the Wrentham or Dever State Schools until the census has been reduced to the number of renovated beds;
- \* No new admissions will occur at Belchertown State School until such time that buildings E and F, and the Infirmary are closed; and

- \* No State School may accept an individual for admission unless: "A consent decree compliant bed is available; an existing resident, not in a compliant bed, is not appropriate for placement into that bed; and an existing resident is not displaced from consent decree compliant housing to accommodate the new admission."

A formal process requiring the exhaustion of all other residential possibilities is necessary in order to request admission/readmission. Once completed, the documentation of these efforts goes to the state school's admissions committee. This committee, whose membership includes staff, family, and human rights committee representatives, is appointed by the superintendent. It reviews each individual request using a standardized checklist and recommends to the superintendent whether or not the admission would be appropriate. The superintendent then determines if someone should be admitted/readmitted. Consumers' rights of appeal are not changed by this policy and remain consistent with departmental regulations.

The superintendents will be providing this office with notification of any admissions/readmissions as they occur, including a certification that all issues relative to the appropriateness of the admission have been satisfactorily addressed. The Department of Mental Retardation will submit monthly reports summarizing admissions as well.

This policy will be reviewed after two years to determine whether changes need to be made. However, this policy may be revised at any time by the Commissioner of Mental Retardation in conjunction with this office.

#### CIRCUMSTANCES LEADING TO ADMISSIONS/READMISSIONS

During the past four years, DMR has notified this office of its intent to admit/readmit 88 persons to the state schools. (This figure is not an accurate count of all admissions/readmissions; DMR indicated recently that the state schools have had 84 admissions in the past two years alone. It is expected that adherence to the new admissions/readmissions policy will improve the accuracy of DMR's reporting.) The Office of Quality Assurance reviewed this sample to determine the types of circumstances leading to admission. It was found that:

- \* 41% were transferred from mental health facilities;
- \* 26% were admitted because their community home environment was unsuccessful in meeting their emotional/behavioral needs;

- \* 15% were admitted because their community home environment could not sustain persons through periods of temporary or prolonged illness; and
- \* 9% were admitted because families could no longer provide shelter and necessary supports.

These figures, while disturbing, are not surprising. It has been clear to this office for some time that there are inadequate behavioral and medical support services in the community. Many of the crisis cases involve the lack of provision of these services.

The Department of Mental Retardation must examine these trends in depth and propose initiatives to prevent unnecessary admissions/readmissions. Every effort must be made to strengthen the community system's capacity to provide medical and behavioral supports. Admissions should not occur because the community system has gaps in the availability of necessary services.

#### F. SERVICES TO CLASS MEMBERS

The Office of Quality Assurance is responsible for monitoring service provision to the approximately 6,000 class members living in the Commonwealth. It receives and responds to individual complaints brought to its attention from a variety of sources. This office's involvement in the lives of these individual class members provides them with much needed advocacy, and also helps to focus the office's attention on issues affecting many persons labeled mentally retarded. At present, this office is actively involved in advocating for approximately 150 class members through this process.

Within the last six months, the Office of Quality Assurance has responded to 40 new complaints. Each complaint may affect one or more class members depending upon the specific circumstances. These forty complaints have been broadly classified into categories, and are listed on the next page. (Please note that some may fall into more than one category. For example, when medical needs jeopardize a person's remaining at home, it is listed in both "Problems with Residential Services" and "Reinstitutionalization".)



* Problems with residential services-----	19
Self preservation problems-----	3
Crisis interrupts residential services-----	3
Insufficient resources delay placement-----	5
Psychiatric problems affect stability-----	2
Inappropriately placed-----	3
Transfer problems-----	1
Medical needs-----	2
* Vendor instability or contract issues affect class members negatively-----	7
* Problems with the quality of program as reflected by the Individual Service Plan-----	5
* Class members' alleged criminal activity disrupts service-----	1
* Insufficient support provided to individuals-----	1
* Alleged abuse or neglect of class members-----	5
* Institutionalization or reinstitutionalization-----	8

The vignettes below describe the real circumstances and experiences of some of these 40 people. They were chosen because they are representative of situations experienced by many receiving services throughout the state. To ensure confidentiality, no identifying information is included and initials have been changed.

#### Mr. B. - an elderly person in need of specialized services.

Mr. B. is a 68 year old man who has numerous medical problems including heart disease and diabetes. He has lived in a number of state institutions throughout his life. He lived at Fernald State School for many years and two years ago he moved into a staffed apartment in a large city.

Mr. B. has a very strong work ethic and, despite his medical problems, had worked in a sheltered workshop five days a week. Recently, Mr. B.'s medical condition deteriorated to the point where his residential and workshop staff did not feel comfortable with the level of care they could provide to him. The area office made a valiant effort to provide in-home medical services to Mr. B. but he still required numerous hospitalizations.

Throughout all of these hospitalizations, Mr. B. has adamantly refused the option of returning to the state school. He says that he would consider himself a failure if he should have to return. During one of these hospitalizations, both his

residential program and workshop terminated him. Mr. B. was then transported to a hospital on the grounds of the state school. He was asked to sign an admissions form at the time of his hospitalization. Now that Mr. B.'s health has stabilized, he would like to return to work and to his community. These options are not presently available to him. He must remain on a hospital ward or go to the state school where he had vowed not to return.

**Ms. D. - a woman who was institutionalized after her mother died.**

Ms. D. is a woman in her fifties who has demonstrated much strength, courage, and patience in the last two years. Ms. D. lived with her mother in a suburban community. They lived alone with no support except each other. Ms. D. helped her mother with the chores. They were mutually dependent upon one another. Ms. D. was not known to DMR until her mother passed away and Ms. D.'s siblings contacted DMR. The Department of Mental Retardation responded to this crisis by admitting Ms. D. to Fernald State School because there was no appropriate place for her to go. All of DMR's staffed apartments and community residences were full.

Ms. D. has had to adapt to a very different way of life at the school: she is living with many other people; she does not have access to stores or freedom to shop by herself; she cannot have a pet (an extremely valued experience for her); and she has to follow certain rules and schedules of daily routines.

Ms. D. has repeatedly stated that she would like to return to her community home and this has been supported by the professionals on her ISP team. She would like to have the opportunity to do the things she used to do. After two years of planning, there are still no programs available to her that would best suit her needs and wants. She will remain at Fernald indefinitely. Sadly, her story may become more typical in the coming years as mentally retarded citizens grow older and their parents are no longer able to care for them.

**Ms. M. - a class member with psychiatric problems living at a state hospital.**

Ms. M. is a thirty year old woman who is a Monson class member. She has a seizure disorder and some psychiatric problems. After moving from Monson, Ms. M. lived in a half-way house with people labeled "mentally ill". During these years, Ms. M. had no service coordinator and no ISP. This office became aware of Ms. M. serendipitously when she was admitted to Worcester State Hospital. Ms. M. has lived at the state hospital for over one year. This office was instrumental in providing Ms. M. with a service coordinator, and an ISP which states that Ms. M. should not be confined to the hospital and should be provided with more appropriate services.

At the present time, Ms. M. remains at the hospital because DMR does not have any residential programs that can serve her many needs which include: medical, mental health, educational, vocational, and residential. She remains in an inadequate environment and she does not receive many of the entitled services stipulated in her ISP.

Recently, the Commonwealth of Massachusetts embarked on an initiative to serve people with the "dual diagnosis" of mental retardation and mental illness. Ms. M. is such a person but thus far has not received the appropriate services despite the efforts of many people, the vigilance of this office, and the commitment of the Department of Mental Retardation.

Mr. T. - a class member who is labeled "autistic" and has multiple needs.

Mr. T. is a 30 year old man who is labeled "autistic". He spent many years at Fernald State School. He now lives in a large community residence with seven other men and works in a large sheltered workshop. Mr. T.'s needs are not being met in his present programs. Mr. T. is highly sensitive to noise and learns best in a quiet environment. He also mimics behavior. A large residence and workshop setting are not conducive to learning and they perpetuate inappropriate behaviors. The activity level at his residence is so confusing that Mr. T. either retires to his room or screams and becomes self-abusive (i.e. hitting himself and pulling out his hair).

Neither of these responses to a stressful situation is helpful to Mr. T.'s welfare. However, he is not taught alternatives because the residence is under-staffed and not trained in providing services to people with autism. The house is often manned with relief staff who are unfamiliar with the needs of the people who live there. Although the staff do the best that they can, these difficult circumstances are now taking their toll on Mr. T.'s physical health. He developed grand mal seizures that have been linked to over-medication.

It has been documented in Mr. T.'s ISP that he should live in a "behaviorally structured residence with 2:4 staff/client ratio." Outside consultants who work specifically with people labeled autistic have written: "The number of people served [in Mr. T.'s program], in conjunction with a low staff ratio, has resulted in a congregate approach which constitutes the most persistent obstacle to the provision of services which are congruent with Mr. T.'s needs... As a result, Mr. T. functions at a maintenance level."



The current administration has invested many hours in planning services for people with autism. It is time to move from the planning stage to the implementation stage. Lives are needlessly wasted with maintenance, or what was once called custodial care.

Vendor A - a provider agency with serious financial problems.

Vendor A is a large provider of residential services to 27 people with mental retardation in Massachusetts. Vendor A had been operating at a financial deficit for several years. Last fall, this office learned that the executive director was resigning due to the agency's financial instability. In an effort to ensure that class members and others were protected until the situation stabilized, this office intervened with the Department of Mental Retardation and the vendor, and conducted on-site inquiries.

With the cooperation of the families, the vendor, and DMR, a satisfactory plan was implemented. Substantial funds were committed by DMR to provide furnishings and equipment sorely needed in the homes. The agency hired a full-time director, restructured the Board of Directors, and transferred a number of people to better living arrangements. This office will continue to vigilantly monitor these changes and will conduct another site visit in the near future.

This last vignette illustrates the importance of cooperation among concerned parties, especially family members, in ensuring that the services provided to people with mental retardation are stable and of high quality. Without hard work and cooperation, the lives of 27 people could have been thrown into turmoil. The agency is now more stable, and through the continued efforts of all concerned, will regain financial stability.

There is another part to this story which has yet to be addressed - how did Vendor A get to this point in the first place? The answer must be sought to determine how to prevent this from occurring in the future. This office recommends that:

- \* The Department of Mental Retardation conduct an in-depth review of the circumstances leading to the crisis, and develop necessary policies based upon the findings;
- \* The Department of Mental Retardation conduct regular audits of contracted agencies, and immediately address irregularities or deficiencies;
- \* Vendor contracts include a line-item for furnishings and equipment so that the upgrading of homes could be done on a routine basis; and
- \* Boards of Directors have access to training materials on financial matters.

While the majority of class members are receiving adequate care in appropriate settings, many have yet to realize the full benefits to which they are entitled. The Department of Mental Retardation must continue to strive to eliminate existing problems and prevent future predicaments such as those described above. To help accomplish that goal, this office recommends that DMR take several steps, including the following:

- \* The reform of fiscal structures to fund individuals in need rather than programs - this will allow the consumer to choose the service most suited to his/her needs;
- \* Prevention of the loss of residential placement due to prolonged illness or disability by requiring the service provider to adapt its service to the changing needs of the consumer;
- \* The further development of small, home-like, handicapped accessible respite homes;
- \* The provision of psychiatric services in typical settings including out-patient assessment, therapy and medical consultation, and access to short-term acute care whenever necessary;
- \* The development of a policy that would prohibit the admission of persons with mental retardation to state hospitals;
- \* The development of more work opportunities in settings where non-handicapped people work and where reasonable wages are provided for productive labor;
- \* The development of additional small (no more than four people), community based homes for people with autism that provide a highly structured, behaviorally oriented learning environment;
- \* The development of residential and day service models for people who are unable to work; (presently, to live in a community residence, one must either have a job or a day program to attend from 9AM to 3PM); and
- \* The maintenance of a strong commitment to prevent the institutionalization or reinstitutionalization of people for the sole reason that no other service is presently available elsewhere.

## **G. TRANSPORTATION SERVICES AT THE STATE SCHOOLS**

As a result of concerns raised through certain individual complaints, this office has done preliminary research into the safety and availability of transportation at each of the five state schools. The following situation illustrates the kind of problem that can and has occurred.

Mr. Q. is a thirty-five year old man who had been scheduled within the year to move from Fernald State School into a community residence. To prepare him for such a drastic change in life-style, it was recommended in his ISP that Mr. Q. attend activities out in the community two times per week. These activities would include educational opportunities (such as food shopping, and learning to use a bank) and recreational opportunities (such as going to the movies, and attending dances). Despite his need for preparation, these recommendations were not provided because there was no transportation available to bring Mr. Q. off the state school grounds. The failure to provide this needed service violated Mr. Q.'s ISP and compromised his ability to adjust to a major life change.

Transportation is a vital service at the schools, providing people with the means to get to day programs, recreational activities, medical appointments, etc., and to participate in other opportunities for a well-rounded life. Initial research indicates great variability from school to school in terms of both the number and condition of transportation vehicles.

While it is impossible to determine from the information gathered the exact number of new vehicles needed, it appears that there are not enough safe and reliable vans and cars to adequately serve the people at the state schools. The Office of Quality Assurance requests that DMR report on the status of all vehicles used for class members at each state school and on actions it is taking to improve transportation availability at the facilities so that no disruption in service occurs.

## **H. PLANNING FOR PERSONS WITH MULTIPLE NEEDS (DUAL DIAGNOSIS)**

The Department of Mental Retardation will soon submit plans to the special legislative committee overseeing the DMH/DMR split that will outline new directions for serving persons with dual diagnosis. These are persons considered to have both mental retardation and some other diagnosis or disability pertaining to their mental health. Increasingly, it has been recognized that such dually disadvantaged persons require a synthesis of services not usually available exclusively within the mental retardation service system.



The scarcity of program models with an appropriate constellation of supports means that persons in this group do not often succeed in the day and residential programs offered to them. Many who have "failed" in such programs may land in extremely restrictive settings such as state hospitals or in-patient units at mental health centers; others become "homeless" persons endangered by their poor judgment with little hope of meeting their basic needs for food, clothing, or shelter.

Although not usually living in state hospitals or mental health centers, many class members are a part of this distinct group. Currently there are two men and one woman in the greater Boston area who have lived in shelters off and on in the past year. Another man has remained on an in-patient mental health unit for over a year because DMR has not found or developed a program to meet his unique needs.

There are also many more who are only marginally secure in their residential programs. At times, due to their emotional problems, they cannot conform to the routines established as requirements, or meet the expectations of their programs. In some cases, these people are transferred to nursing homes or admitted to institutions because they don't "fit in" well. If an individual requires an "acute" care setting due to temporary mental instability or decompensation of some sort, it is financially difficult to hold the person's bed until he/she is healthy enough to return. This is particularly true of ICF's/MR programs.

While there is presently no estimation of the number of community based consumers with this disability who will require special services, approximately 260 persons in state hospitals have been identified as part of this group. All 260 were expected to be assigned to service coordinators by March 1, 1988. This represents a significant increase in cases without an accompanying increase in the number of service coordinators. This office is concerned that service coordinators' capacity to provide quality services will diminish. (This issue is addressed in a subsequent section of the report.)

State school superintendents have been asked to evaluate their school's capacity to accept transfers of members of this group from the state hospitals, and state school staff have been visiting the state hospitals to assess these individuals. This office is not aware of similar efforts by community based DMR staff. With this in mind, it must be stressed that community based programs often represent the least restrictive and most advantageous environment for many of these persons.

If community alternatives are not available and state school admissions are sought, such admissions should occur only when adequate resources are available, and the rights of class members to a safe environment have been assured. Commissioner Mary A. McCarthy has assured this office that DMR is cognizant of its

obligation to adhere to the recently developed admissions policy and to abide by the freeze on admissions at Dever, Wrentham, and Belchertown state schools. In addition, she has indicated in recent correspondence that DMR is fully aware of the constraints on resources identified at certain state schools during the staff reassignment process. This office is hopeful that it will be able to work cooperatively with DMR over the next several months as it continues to develop plans for this group of very needy consumers.

## II. QUALITY ASSURANCE PROCEDURES

The Office of Quality Assurance is very concerned with the Department of Mental Retardation's (DMR) uneven progress in the area of quality assurance systems development. While some work has been done on the Family/Guardian Monitoring Process, Individual Service Plan (ISP) revision, Massachusetts Service Coordinator Battery (MSCB) revision, and Day Habilitation program accreditation, other critical quality assurance activities described in DMR's plans submitted to court in 1986 have not developed as projected. This indicates that quality assurance has not been a high enough priority of the Department of Mental Retardation.

The court was unequivocal in its expectation that DMR concentrate on forming effective quality assurance processes. It saw these processes as vital to the foundation of disengagement. With a solid system in place, the court and the plaintiff representatives would rest comfortably knowing that the state is capable of effectively monitoring service quality. Without a proven quality assurance system in place, additional external oversight may still be necessary.

It is therefore essential that greater emphasis be placed on critical quality assurance activities that will include:

- \* Hiring staff at the regional and local service center levels of DMR management to ensure that quality assurance activities are carried out;
- \* Conceptualizing and implementing a method to coordinate and computerize pertinent quality assurance data including: licensing data, ISP data, contract requirements, on-site observations, Department of Public Health (DPH) surveys, and MSCB data;
- \* Using coordinated quality assurance data to:
  - o Analyze and correct service gaps and deficiencies;
  - o Plan and budget needed services at the local, regional, and central levels based on patterns of need and deficiency;
  - o Evaluate the effectiveness of services;
  - o Ensure that quality assurance processes are not duplicative or otherwise burdensome to vendors;
  - o Plan training curriculum;
  - o Provide technical assistance and support to vendors when necessary; and
  - o Recognize programs of excellence.
- \* Developing program standards that go beyond the minimal standards of licensing;
- \* Licensing Specialized Home Care programs;



- \* Certifying state operated Executive Office of Communities and Development (EOCD) programs; and
- \* Developing and implementing a reliable measure of individual consumer progress.

While not an exhaustive summary of all areas of quality assurance, the following sections of this chapter detail issues of special concern at this point in time.

#### **A. FAMILY/GUARDIAN MONITORING PROCESS**

In December, 1987, the Office of Quality Assurance wrote to Commissioner Mary A. McCarthy expressing great concern over DMR's delay in implementing the Family/Guardian Monitoring Process. The court's final order called for the development of such a process by March, 1987. Commissioner McCarthy reported to this office that DMR was to test the process starting January 15, 1988, to determine if changes would be required in the forms or procedures that had been developed. That process, including the formulation of final revisions, was to have been completed by March 1, 1988.

The Family/Guardian Monitoring Process finally appears close to implementation. This office is concerned, however, that further delay will occur unless implementation of this process receives the highest priority. It is critical that DMR move swiftly on this commitment.

Furthermore, this office has not been made aware of any additional resources being planned to provide training, clerical support, and travel reimbursement for the volunteers of this project. Under such conditions, it will be difficult to recruit volunteers and to ensure that reports are developed and communicated in a timely fashion. This office has raised this concern on several occasions, both at meetings and in writing. The Office of Quality Assurance requests that DMR report on its current action to immediately implement and fund this long awaited process.

#### **B. REVISIONS TO THE MASSACHUSETTS SERVICE COORDINATION BATTERY**

The Massachusetts Service Coordination Battery (MSCB) was developed approximately nine years ago to gather important information about persons receiving DMR's services. Designed to be administered annually to each consumer, the survey records basic demographic information regarding program needs as well as information regarding behavior and skill competencies. In this

way the MSCB serves as a source for important statistics and as an "outcome measure" - a means of determining an individual's progress at specific intervals. The annual administration of the MSCB was included as a requirement of the Wrentham and Dever consent decrees. Over time, it was discovered that there were problems with the reliability and validity of the data collected using this tool. In 1986, DMR proposed to revise the MSCB and correct these problems.

In December, 1987, this office was provided with the most recent draft of the MSCB. At that time, the Office of Quality Assurance became aware that the behavioral and skill competency domains had been eliminated, thus negating the MSCB's capability to serve as an outcome measure. Without that capability, the Department of Mental Retardation is unable to make vital judgments about the adequacy and effectiveness of the services it funds. This is a serious gap in quality assurance. If the MSCB will not serve in this capacity, it is incumbent upon DMR to identify an alternative that will.

Also, the MSCB is not yet operational even as a source of demographic information due to issues regarding the computer management of the data base. The Department of Mental Retardation has acknowledged that the project is far from complete, and that no timelines have been set.

In the interim, vital information regarding the types of services that consumers need goes unrecorded at the central office level of DMR. The Office of Quality Assurance is concerned that this will give a false picture of statewide resource needs. This has a direct impact on how fiscal resources are budgeted, prioritized, and allocated. As such, it is a very serious concern.

The Office of Quality Assurance requests that DMR report on actions it is taking to:

- \* Provide a valid tool to assess individual progress at regular intervals;
- \* Complete the revision of the MSCB in a more timely fashion; and
- \* Provide an effective process for tracking unmet needs on a regular basis at the local, regional, and central office levels.

### C. INTERAGENCY QUALITY ASSURANCE EFFORTS

There are two types of programs serving numerous class members that are the major alternatives to DMR funded programs: Day Habilitation programs and Intermediate Care Facilities for the Mentally Retarded (ICF's/MR). These programs receive federal medicaid dollars and matching state funds that are allocated through the Department of Public Welfare (DPW).

Although oversight and supervision of these programs does not come from DMR, it must be noted that DMR, by its public mandate, is ultimately responsible for the mentally retarded persons receiving these services. The agencies directly involved include the Department of Public Health (DPH) and the Rate Setting Commission (RSC).

#### THE DEPARTMENT OF PUBLIC HEALTH'S CAPACITY TO PERFORM REQUIRED SURVEYS

The Office of Quality Assurance commends the Department of Public Health for its competent service in the certification of the state schools and the community based ICF's/MR. The staff in the survey operations group have consistently conducted these surveys with a deep understanding of persons with mental retardation and a fair application of the standards.

The Office of Quality Assurance is concerned, however, that DPH's resources are being stretched beyond their capacity. Within the past three years, numerous ICF's/MR have been developed throughout the state and each facility must be surveyed regularly by DPH. During this same period, DPH has received no additional staff for its ICF/MR survey operations.

The result has been that survey operations are not able to meet the demand for new certifications in a timely fashion. Without certification, the state cannot receive federal reimbursement and consumers are served in programs that have not been assessed for the adequacy of their services.

The Office of Quality Assurance recommends that additional resources be provided to the Department of Public Health's survey operations division.

#### DAY HABILITATION PROGRAMS

Day Habilitation programs serve a large number of severely impaired class members. Until this fiscal year, there was no external review process established by DPW, the funding agency, to evaluate the quality of service provided.

In September of 1987, DPW issued regulations requiring that by July 1, 1988, the state's 30 day habilitation programs must be certified by the Commission on the Accreditation of



Rehabilitation Facilities (CARF) or the Accreditation Council for Developmental Disabilities (ACDD). Programs failing to comply with this requirement will be terminated from the Medicaid program. Programs that have been surveyed but cannot achieve full or provisional accreditation or receive an abeyance will also be terminated. To prepare for this process, DPW wrote to day habilitation programs to explain the requirements and offered training on the accreditation process. The Department of Public Welfare reports that to date it has received survey results from two programs. Eight others are currently being surveyed and the remainder have scheduled surveys prior to July 1, 1988.

It is only a few months until the deadline and most survey results are still outstanding. There will be little time to prepare alternatives if a program fails to be surveyed or fails to meet the required standards of care. As the lead service agency for most persons receiving day habilitation services, DMR will be the agency responsible for providing alternative services if problems arise. Therefore, it is critical for DMR to monitor the process carefully with DPW.

At this point, however, DMR has no procedures arranged to obtain survey results from DPW or from the day habilitation providers. Without this information, it cannot adequately monitor services to class members or others in these programs. Therefore, this office recommends that DMR immediately develop formal agreements to receive these results as they become available.

#### ACCESS TO QUALITY ASSURANCE INFORMATION

Staff at the local service centers and other levels of DMR management should have access to survey results of day habilitation programs and ICF's/MR. That way, service coordinators are made aware of the quality of services and can effectively protect their protégés against substandard conditions. The Department of Public Health is consistent in sending survey results to local area offices but often service coordinators are not made aware of this important information.

Service coordinators play an extremely critical role in quality assurance efforts where consumers are served by agencies outside of DMR. Service coordinators are often DMR's only link between paper knowledge about what is happening for the consumer and the observed quality of the day to day services.

Despite this critical role, service coordinators usually do not see the DPH surveys and may not be in frequent contact with the consumers in the ICF's/MR and the staff there. Information must flow among day program, area office, and ICF's/MR to ensure that services are adequate and appropriate. The Department of Mental Retardation does have a policy that details the responsibilities of service coordinators, but it is clear to this office that it is not consistently implemented across the state.

The Office of Quality Assurance recommends that DMR survey the way this interface is being handled. Service coordinators and involved managers must have the information necessary to ensure quality services.

#### CONFLICTING INTERPRETATION OF DAY HABILITATION REGULATIONS

While researching the status of day habilitation compliance with accreditation requirements, it became apparent that important differences exist among DMR, DPW, and RSC over the interpretation of certain regulations governing day habilitation programs. The problem is with the regulation that structures the maximum allowable staff to consumer ratio in these programs at 1:4.

In many cases, DMR has placed consumers who require very intensive staff ratios into day habilitation programs and has agreed to supplement the provider's approved medicaid reimbursement in order to enrich the staffing ratios. Both the Rate Setting Commission and the Department of Public Welfare have recently questioned the appropriateness of this type of arrangement. They maintain that it is inconsistent with the existing regulations and undermines the rationale for the "class rate" that is generated through a complex formula based on consumer need. These differences are negatively affecting the delivery of service to class members and others and should be resolved immediately.

Two class members were unable to leave substandard environments in state schools for over six months due to this problem. Also, the processing of numerous contracts was delayed until recently by this controversy, again affecting the delivery of service. While these specific contracts are now under way, the problem is not resolved and no additional contracts will be processed until a solution is reached. It is not certain how many class members will be affected by this problem or whether Housing Agenda placements will be delayed as a result. The Office of Quality Assurance expects to be informed immediately if placements are delayed on this account.

Several solutions have been discussed by the involved state agencies and the providers. These include modification of the existing regulations and the use of fiscal structures that will not violate existing regulations to supplement the program resources.

The Department of Mental Retardation has relied heavily upon the day habilitation model as the day service most appropriate for the substantial number of class members living in the new Housing Agenda programs. It is essential that representatives from DMR, DPW, RSC, and the provider community meet as soon as possible to discuss necessary reforms.



The problem described above raises issues of a more global nature about the day service continuum as it currently exists in this state. It is clear to many concerned parties, especially the service consumers, that enormous fiscal resources continue to be poured into programs that fail to integrate handicapped persons with non-handicapped persons in the workplace, fail to support meaningful work opportunities, are ineffective in preparing people for real jobs, and do not build upon individual preferences or competencies.

Individual Professional Review reports document the litany of these patterns throughout the state but DMR has failed to take a leadership role in the reformation of this system. It is recommended that DMR conduct a consumer survey to determine the types of social and vocational opportunities that the service consumers are seeking in their workplace and then begin to build the foundations for better services around these preferences. Consumers, families, advocates, DMR, and other agencies must join together to deliberately and collaboratively reform this system.

#### D. SERVICE COORDINATORS' CASELOADS

Service coordinators play a vital role in quality assurance. As described above, they represent the main communication link among the consumers, the vendors who provide the service, and DMR who usually pays for the service. Ideally, they are on-site at programs far more frequently than any licenser or surveyor, and have an in-depth knowledge of the people on their caseloads. These factors enable them to make sound judgments about the quality and suitability of services provided to an individual.

When caseloads are too large, service coordinators cannot effectively know when things aren't right and have little time to develop solutions to problems they learn about. The Office of Quality Assurance raises this issue because DMR continues to add "cases" without planning additional staff allocation, and does not have a policy or agreement regarding the maximum number of persons that a service coordinator can effectively serve.

In 1986, the Department of Mental Health (DMH) conducted a survey to determine the exact caseloads handled by service coordinators at that time. Despite several requests, this data was not submitted to the "Court Monitor's Office" (now the Office of Quality Assurance). The Department of Mental Health did, however, determine that 45 new positions were required to reduce excessive caseloads and these were allocated. However, no new allocations are planned for FY88 despite the addition of hundreds of people placed under the Housing Agenda, 250 persons who live in state hospitals, and the 450 persons who turn twenty-two (22) years of age this year and are no longer eligible for educational services.



Although there is no overall caseload ceiling, DMR does use a three-tier system as a guide for caseload size:

1. Active - caseload ratio 1:30
2. Support - caseload ratio 1:45
3. Registration - caseload ratio 1:60

There are three problems with this system. First, there is no formula to determine the maximum cap on the number that can effectively be served when combining the three categories. Second, the ratios are not based upon realistic observations of service coordinators' activities. For example, the criteria for who fits into the "support" category includes the types of consumers who often require much more time and attention than those who fit into the "active" category. Third, by assigning cases to service coordinators on a "registration" status, it gives the misleading impression that those people are receiving service coordination services when, in fact, they have minimal if any contact with a service coordinator.

Actions must be taken to ensure there is an adequate number of service coordinators. The Office of Quality Assurance recommends that DMR:

- \* Submit to the Office of Quality Assurance data collected in 1986 on service coordinators' caseloads;
- \* Establish a committee with service coordination representation to determine reasonable caseloads (The committee should review the social casework literature to determine the recommended professional standard and examine their own activities to reach a definitive criterion.); and
- \* Maintain accurate caseload data annually and seek additional funding to hire the number of service coordinators necessary to support consumers effectively.

#### **E. LICENSING SPECIALIZED HOME CARE PROGRAMS**

Many class members live in residential situations known as Specialized Home Care programs. In this model, a consumer is placed with a family/individual in a private household. The family or individual receives compensation from DMR for this service and is expected to provide a comfortable home life as well as assist the consumer in acquiring important life skills.

Despite the existence of regulations that specify standards for Specialized Home Care settings, these programs have never been licensed using these regulations. The Department of Mental Retardation maintains that there are insufficient licensing

resources to do so and has not provided a plan specifying how or when licensing will take place. Without such a plan, the Office of Quality Assurance is no longer able to accept and approve interim monitoring procedures conducted by service coordinators.

These procedures were accepted by the Office of Quality Assurance in 1986 on an interim basis, and the failure to develop a solid plan for initiating standardized licensing damages confidence in this process. Therefore, the Office of Quality Assurance insists that DMR license these programs by November 1, 1988, or move the involved class members to licensed programs.

#### **F. PROGRAM COMPLIANCE WITH LICENSING STANDARDS**

An important issue that has been raised continually by parents' groups is DMR's inability to effectively enforce its licensing standards. The Department of Mental Retardation's record in identifying problems has been excellent. The concern lies with its ability to ensure that these problems are corrected expediently.

The Office of Quality Assurance receives periodic reports from DMR which identify the number of programs that: 1) have not corrected deficiencies within established timelines; and 2) have been operating without licenses. As of November, 1987, eleven were identified as unable to correct deficiencies in time, and one hundred were noted as operating without a license.

In response to these concerns, DMH developed a policy in 1984 to strengthen its enforcement capacity. Unfortunately, it was not successful. As a result, DMR reported to the court in its 1986 Quality Assurance Plan that it would pursue several new options including:

- \* Requiring area offices to provide periodic status reports on uncorrected deficiencies;
- \* Requiring written approval from the appropriate commissioner when timelines are established or extended;
- \* Strengthening contract language regarding compliance with licensing requirements;
- \* Sanctioning DMR personnel who are remiss in the process;
- \* Rebidding the program's contract unless timely compliance is achieved; and
- \* Reporting periodically from the chief of licensing to the commissioner on the status of deficiency correction.

In October, 1987, DMR proposed an amendment to its policy regarding the correction of licensing deficiencies (Policy #85-41). The Office of Quality Assurance and its Advisory Panel felt that the proposed amendment would not result in strengthened enforcement and recommended some additional changes. This office recently received another policy draft and will submit comments to DMR.

The Office of Quality Assurance is quite concerned with the slow rate of progress in this area. While it is understandable that the DMH/DMR split may have slowed progress, it is essential that enforcement be strengthened very soon. The Office of Quality Assurance requests that DMR establish a time frame for implementation of the revised enforcement policy and report on its efforts to accomplish this task.

Along with strengthening enforcement, it is critical that resources be made available to vendors when deficiencies result from a lack of funds. In many cases, the unavailability of such resources has rivaled problems with enforcement as an obstacle to the correction of problems. During FY88, DMR received approximately \$800,000 to assist in correcting licensing deficiencies. Unfortunately, that amount was not nearly enough to meet the needs that currently exist across the state. Until such time as adequate funding is made available on a continuing basis, many licensing deficiencies will remain uncorrected, and providers will have increasing difficulty in maintaining an adequate level of care for consumers.



### III. CAPITAL AND HOUSING ISSUES

The court's decision to disengage was, in part, based upon the state's progress in providing adequate and appropriate residential environments for class members, and its commitment to complete: 1) the Housing Agenda, (the state's plan for developing housing in the community for class members); and 2) several capital projects at the state schools. This chapter provides updates on many of those efforts.

In the Office of Quality Assurance's August, 1987 report to the Governor, details were given regarding the description and status of these projects. Serious concerns were raised regarding lack of progress in certain areas. While some progress has been made, and several planning and strategy meetings have occurred in an effort to expedite project completion, this office is very concerned with the pace of movement towards full compliance. More than 250 people still remain in non-compliant campus housing and many will probably still be there through 1989 and possibly beyond. In addition, capital projects at the schools that were supposed to be completed a year and one-half ago are still unoccupied, while some occupied buildings continue to have uncorrected construction deficiencies.

Immediate and extraordinary efforts must be made to complete all capital projects. For the state to fulfill its obligations on all unfinished tasks, it must concentrate its efforts in many critical areas.

#### **A. FY89 CAPITAL BUDGET REQUEST**

The state has been able to identify funding for some of the capital projects included in the court's final order. Others, however, still require funding in order to be completed. When the Department of Mental Retardation (DMR) prepared its FY89 Capital Budget request, it made a concerted effort to ensure that most, if not all, unfunded projects were included. The total request, which also incorporated items not specifically related to consent decree compliance, was for \$36,027,719.

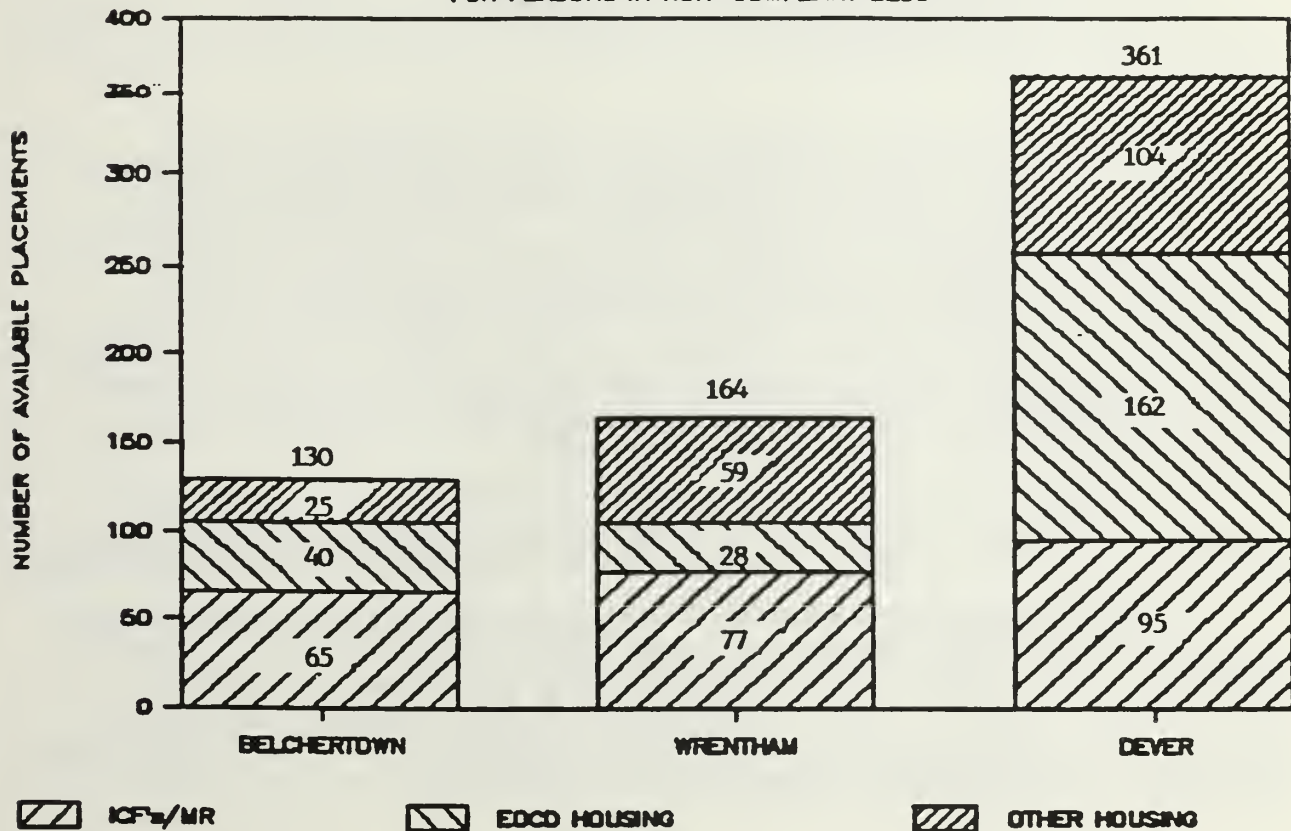
This office is pleased to report that the Governor's House I Capital Budget identifies most of the consent decree projects included in DMR's capital request. (Within the sections that follow, reference is made where appropriate to funding issues on particular projects.) However, several items are identified for possible funding from various pool accounts where they will be competing with other projects for funding. If the legislature enacts the current House I request, the state must establish as a priority the funding of all projects called for in the court's final order.

## B. HOUSING AGENDA IMPLEMENTATION

The Housing Agenda calls for the development of community housing of various types to serve 655 class members from Belchertown State School, Wrentham State School, and Dever State School (see graph below). Class members selected to be moved from each school are those for whom a consent decree compliant bed was either unavailable or not being renovated.

### HOUSING AGENDA COMMUNITY PLACEMENTS

FOR PERSONS IN NON-COMPLIANT BEDS



According to plans originally filed with court, the placement of all class members was to have occurred by November, 1987. However, in August, 1987, this office reported to the Governor that the state had fallen far behind in implementing its housing plan and that completion of all projects was then projected for July, 1989. This office is very distressed to report that housing agenda progress continues to be delayed, with completion dates now being extended even further until December, 1989.

As illustrated by the chart below, class members from Belchertown and Dever are those most affected by the Housing Agenda delays.

STATUS OF PLACEMENTS AND BUILDING CLOSINGS

	<u>BELCHERTOWN</u>	<u>DEVER</u>
<u>STATUS OF PLACEMENTS</u>		
SCHEDULED PLACEMENTS	130	361
ACTUAL PLACEMENTS	61	177
FUTURE PLACEMENTS	69	184
<u>STATUS OF BUILDING CLOSINGS</u>		
BUILDINGS TO BE CLOSED	3	7
BUILDINGS ACTUALLY CLOSED	1	2

The class members residing in these non-compliant buildings have had to wait long past original deadlines to be provided with decent residential environments. It has been 16 years since the Belchertown suit was filed in court and there are still 50 class members living in the non-compliant Infirmary and E Building. At Dever, the consent decree called for all persons to be placed in appropriate settings by June 1985 - yet there are still 176 persons living under substandard conditions in the L-Shaped buildings, and many will not likely be provided with better housing for another year or two.

HOUSING FUNDED BY EXECUTIVE OFFICE OF COMMUNITIES AND DEVELOPMENT

A major component of the Housing Agenda is the development of duplex apartment units by Local Housing Authorities (LHA's) through grants from the Executive Office of Communities and Development (EOCD) under the Chapter 689 Program. The table below identifies the status of these projects and the impact on placement schedules for Dever and Belchertown:

EOCD HOUSING PROJECTS

NUMBER OF PROJECTS	51	<u>PLACEMENTS PLANNED</u>	
ORIGINAL COMPLETION DATE:	11/1/87	DEVER	162
		BELCHERTOWN	40
NUMBER COMPLETED	15	<u>ACTUAL PLACEMENTS</u>	
		DEVER	13
		BELCHERTOWN	4
PROJECTS REMAINING	36	<u>PLACEMENTS REMAINING</u>	
PROJECTED COMPLETION DATE:	12/31/89	DEVER	149
		BELCHERTOWN	36



The major factor originally affecting these schedules was the identification of appropriate sites for several projects. After much effort, EOCD was able to gain the cooperation of the necessary LHA's, and most of the sites have now been selected. However, siting for seven key projects has still not been secured. These projects are scheduled to serve 29 people from Dever.

In an effort to offset the impact of these delays, this office recommended in its last report that DMR, EOCD, and the Executive Office of Human Services (EOHS) immediately determine what steps could be taken to complete these projects within a more acceptable time frame. Several high level strategy meetings occurred (including one with Secretary Amy Anthony, Secretary Philip W. Johnston, Commissioner Mary A. McCarthy, and the Director of the Office of Quality Assurance, Tom Wachtell), and several initiatives were instituted. Included among these were:

- \* A major reorganization of EOCD development procedures and staffing patterns, and the assignment of additional staff and consultant funds to these projects;
- \* A policy change allowing the purchase of private sites, and the use of a new acquisition tool more suited to market conditions;
- \* Establishment of cash incentives for housing authority directors who meet or shorten development schedules;
- \* Continuous inter-agency initiatives, such as regularly scheduled meetings, to review progress and refine strategies;
- \* Relocation of sites that have had siting difficulties;
- \* Continued linkage of consent decree projects with the award of other funds to LHA's; and
- \* Authorization to begin the design process before a site is secured.

Unfortunately, even with these earnest efforts, the completion date is now projected for December, 1989. The Dever and Belchertown class members that continue to reside in substandard living environments have seen many projected placement dates come and go. For the sake of all these class members, and particularly for those scheduled to be placed into the unsited apartments, further dramatic actions must be taken to ensure that relief is forthcoming as soon as possible.

The Office of Quality Assurance recommends that the Governor immediately direct the Executive Office of Communities and Development, the Executive Office of Human Services, and the Executive Office of Administration and Finance to take whatever

steps are necessary to provide housing to these class members in a more timely fashion. Consideration should be given to the following:

- \* Declaring the completion of these projects as an emergency so they could be exempt from the state's construction bidding laws;
- \* Creating more placement opportunities through vendor operated programs;
- \* Making changes where possible and appropriate in the placement plans so that programs to open within the next 12 to 15 months can serve more Dever and Belchertown class members than currently planned; and
- \* Having EOCD serve as the direct developer rather than utilizing LHA's in any town where cooperation has not been forthcoming.

Proceeding with any of the above steps could have serious implications and repercussions. However, the promise to these class members has remained unfulfilled for so long that taking such dramatic steps may be the only reasonable response.

#### STATE CONSTRUCTED INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED (ICF's/MR)

Construction on the vast majority of ICF's/MR is now proceeding without any substantial additional delay. In fact, 41 of the 46 facilities to be constructed are now complete. However, two particular facilities constructed in Pittsfield that were originally planned to open in July, 1987, are still not open. Completion of these projects is particularly important since it would allow for the placement of 16 persons currently living in Belchertown's non-compliant Infirmary building.

One of the Pittsfield sites is actually ready for occupancy but there is insufficient water pressure available through the town's water supply to operate the fire protection system. The Department of Mental Retardation expects this problem to be resolved by October, 1988. Unfortunately, the problems at the other site are much more serious, for they are related to poor construction quality. Correction of these problems has recently become complicated by the death of the construction contractor, and DMR reports that a resolution date cannot be predicted at this time.

It is essential that the Division of Capital Planning and Operations (DCPO) proceed immediately to ensure swift completion of these projects. The Office of Quality Assurance requests DMR and DCPO to report on the actions they are taking in this regard.

### C. STATUS OF PROPOSED BUILDING CODE FOR STAFFED APARTMENTS

Since the Office of Quality Assurance's last report, much progress has been made in the development of a revised Building Code for staffed apartment programs. A public hearing was held in November, 1987, by the Department of Public Safety (DPS) to hear testimony on the proposed Section 440. Testimony in favor of adoption with certain modifications was given from this office, Secretary Johnston, Commissioner McCarthy, and others. The proposed code with modifications was subsequently approved by DPS. At the present time, DPS is developing regulations and an implementation strategy with the cooperation of DMR. Major features of the new code include the following:

- \* Group Dwelling Unit License Definition - A unit licensed or operated by the Department of Mental Health as a residence for four people who may or may not be capable of self-preservation (the ability to independently exit a building within 2 1/2 minutes). These units are generally referred to as staffed apartments;
- \* Residents are classified as being either "impaired", "partially impaired" or "unimpaired" depending on their ability to self-preserve. Classification is done by the operating agency (DMR) prior to application for a certificate of occupancy;
- \* The unit is classified into one of three categories depending upon the level of impairment of those who reside there;

Category A may contain any or all of the resident classifications. The entire building must either be equipped with a fire suppression system, or be of a protected construction type equipped with fire alarms, or comply with the provisions of Section 438; or if the building is of unprotected construction it shall be limited to one story and be equipped with fire alarms;

Category B may house only "partially impaired" or "unimpaired" people. The building must either comply with any Category A option, or all stories must have two independent exit ways, and the building shall be equipped with fire alarms;

Category C may house only "unimpaired" people. The building must either comply with any Category A or Category B option, or shall comply with Section 424; and

For all categories, all people labeled "impaired" shall have their rooms on the ground floor or where there is a horizontal exit.



According to testimony from the Commissioner of the Department of Mental Retardation, there are approximately 500 apartment programs serving 1,500 people within the Commonwealth. The implementation of this building code will help afford greater opportunities for people to live in safe homes in their own communities.

The Office of Quality Assurance commends DPS for the development of this new code. In addition, this office is pleased to report that EOHS has publicly stated that upon implementation of the new code, funds will be made available to bring homes into compliance. However, no implementation timelines have been set and many details still need to be worked out, including:

- \* Promulgation of regulations;
- \* Training of inspectors;
- \* Timelines for compliance for already existing staffed apartment programs; and
- \* Appropriation of sufficient funds to bring existing homes into compliance.

The Office of Quality Assurance requests that DMR and DPS report on their plans, including timelines, for full implementation of this new building code.

#### **D. SPACE AND GROUNDS COMMITTEES AT THE STATE SCHOOLS**

As part of the court's final order, and upon the recommendation of this office, each state school was to establish a standing committee that would assist the superintendent in planning space utilization, and eliminating building deficiencies. On June 10, 1987, a format and structure for these committees were agreed upon by all parties and the facilities were asked to begin implementation of this mechanism. While the overall responsibilities for these committees are the same, the structure of each varies according to the interests of each superintendent and his/her respective parents' group.

This office is very pleased to report that each committee has been activated and is considering matters of great importance to the schools and class members. Examples of the issues being addressed include: long-range campus planning, specific building improvements, day program space assessment, changes in building occupancy capacities, and planning for the demolition of unoccupied buildings.

It is expected that these committees will become an invaluable aid to superintendents as they continue to face critical decisions about the use of the schools' facilities.

By combining the views of both parents and staff, the Space and Grounds Committee will hopefully serve as an effective vehicle for sharing concerns, obtaining valuable input, and resolving differences of opinion.

#### **E. BELCHERTOWN STATE SCHOOL**

##### **IMPROVING THE QUALITY OF LIFE IN G BUILDING AND COTTAGES**

In accordance with the court's final order, the state developed plans last spring to improve conditions in G Building and certain cottages on campus. Work plans include: substantial improvements to the dining room, day rooms, recreational space, bedrooms, and hallways in G Building; additions to at least two of the cottages; and expansion and renovation of the canteen.

Unfortunately, the estimated cost of this project, approximately \$400,000, made funding through existing resources impossible. Funding necessary to proceed with completion of this project has, therefore, been requested in the FY89 Capital Budget. It is critical that funding be secured as soon as possible so that this project can be completed.

##### **ELECTRICAL DISTRIBUTION SYSTEM**

This project, which provides for modernization of the school's electrical distribution system, appears to be near completion. The work was initially delayed due to the discovery of exposed asbestos. That problem was eventually resolved and work was able to proceed in a timely fashion. This project is expected to be completed by May, 1988.

#### **F. MONSON DEVELOPMENTAL CENTER**

##### **PROVISION OF ADEQUATE PROGRAM OPPORTUNITIES**

The Office of Quality Assurance has continued to review the needed day program options required at Monson Developmental Center. In response to a request from this office, Monson officials have reported on the status of day service options at the facility. The report presents a compelling argument for people to receive day programs outside of their residential building. One hundred forty people who should receive day services in locations outside their residences, currently attend day programs in their residential buildings. This figure is even more distressing when one considers that many of these people are afforded very few opportunities to have any activities away from their buildings.

Data indicates that the average amount of time spent in activities away from the building is only a few hours per week, or even per month, as is the case with some persons living in Buckley building.

It should be noted that Monson officials have been working hard, given their available resources, to improve conditions in this most critical area. In the past eighteen months, 100 additional persons have begun receiving out-of-building day services. Monson officials have also increased the availability of other out-of-building activities, particularly in the recreational and leisure time areas. In addition, school officials hope to provide an additional 40 to 50 persons with day services outside their building within the next six to eight months.

Despite these efforts, it is clear that additional program options are still required to serve the current population. Additionally, since Monson's population will likely remain relatively stable for the foreseeable future, this need is going to exist for some time to come. This office recommends that the state immediately determine the actions it will take to correct this situation. Consideration should be given to the following:

- \* More program space at the facility;
- \* Off-campus day programs; and
- \* Supported work options in industry.

#### LONGVIEW RECREATIONAL AREA

Current plans for this project include the construction of a pavilion adjacent to Longview, construction of paved walkways to ensure safe access to the pavilion, and landscaping. Some preliminary site preparation work was completed last summer. The cost of this project is apparently going to be slightly higher than the initial estimates. School officials report they are currently working with DMR to identify the additional \$5,000 required to proceed. It is hoped that work on this project can move forward this spring. This office requests that DMR report on its efforts to identify the additional funding and to complete this project by the current June 1, 1988 timetable.



## G. FERNALD STATE SCHOOL

### STATUS OF COMPLETION OF ONGOING PROJECTS

This section provides updates on the status of several unfinished projects that were in progress when the court issued its final orders.

#### Greene Building

As indicated in this office's August, 1987 report, Greene building was designed to serve 108 of Fernald's most severely disabled class members. It was originally scheduled to open in April, 1986. Unfortunately, as a result of many delays and problems, this building has yet to open its doors to Fernald class members. The most significant delays were caused by excessive noise and vibration emanating from the mechanical room located under one of the apartments, and by an inability to get the heating/ventilation/air conditioning (HVAC) system to work properly and provide consistent climate control. Following several months of discussions and study, the necessary work was finally performed in the mechanical room to alleviate the noise and vibration condition. It does appear to have resolved the problem sufficiently to allow for persons to reside in the once affected apartment.

The HVAC problems, however, have proved to be far more complex than originally thought by DCPO. Inconsistent temperatures, unexplained shut downs of the air handling units, and other problems plagued the system from the start. The court was quite concerned with this issue, particularly because the persons scheduled to live there are severely handicapped. As a result, it stipulated that the building was not to be occupied until the HVAC system was functioning adequately.

Following numerous failed attempts to get the HVAC units consistently operational, an independent company was retained to work on the system. It appears that the system may finally be able to maintain consistent climate control within the building. However, complexity of the system mandates the need for an ongoing service contract with an outside company to ensure proper maintenance. The Department of Mental Retardation has made a commitment to provide Fernald with sufficient funding on a yearly basis (approximately \$30,000 for the current annual cost) to support this contract which is currently out for bid.

One additional problem was uncovered during the independent company's review of the system. Several irregularities were discovered with the installation and operation of smoke dampers and related equipment which left the dampers non-operational. Work is currently under way to correct these problems. Hopefully, the smoke dampers will soon be functioning properly thereby removing the last major impediment to occupancy.

Since the persons to live in Greene building are severely handicapped, it is essential that the HVAC system continue to function adequately and be properly maintained. While it does seem to have finally passed its first test, close monitoring of its operation will be necessary. This will be particularly true as the seasons change and when the air conditioning system gets its first major test this coming spring and summer. Because of the system's previous operational problems, officials should maintain an appropriate level of skepticism regarding its ability to function properly.

To ensure that the parties are kept aware of the status of the system's operations, Fernald has agreed to perform two critical monitoring functions. First, it is going to periodically test the temperatures in random locations throughout the building. This will provide a record of temperature consistency. Second, it is going to maintain a record of maintenance problems with the HVAC system, including shutdowns, and will report through DMR to the Office of Quality Assurance on a monthly basis. This office will carefully track these ongoing reports to determine if residents of Greene building are being adequately served.

#### Thom Building

A major problem previously reported by this office as delaying completion of Thom hospital building was the need to install oxygen and vacuum tubes in bedside areas. In addition, it was determined that the outdated and inoperable X ray equipment needed replacement. This office is pleased to report that the work on the oxygen and vacuum tubes has been completed, and that the state is proceeding with purchase of new X ray equipment.

Unfortunately, it was discovered a few months ago that the elevator shaft was not adequately fire protected. This has caused another delay in the occupancy of Thom building. As of this writing, a contract has yet to be awarded for the work required on the elevator shaft. The Office of Quality Assurance recommends that DCPO make every effort to expedite this work.

Finally, a commercial washer and dryer still need to be installed to help handle the heavy laundry load. The Department of Mental Retardation reports that engineers are developing a scope of work for this project, and that funding has been made available for purchase and installation.

The Office of Quality Assurance requests that DMR and DCPO jointly conduct a final review of this building to ensure that no further impediments to occupancy remain, and immediately report their findings to this office.

### Woodside/Brookside Conversion

The planned conversion of the Woodside and Brookside buildings from residential to program space will occur once Greene building is opened. They have been serving as interim housing while Greene building has been undergoing renovation.

A designer for this project has been selected and work has begun. The Office of Quality Assurance recommends that every effort be made to move this project along swiftly and requests that DCPO submit to this office a schedule for the project's completion.

### Sitework Project

The court's order stipulates the expenditure of \$208,000 towards improving exterior site conditions at the Waltham campus. In addition, the Office of Quality Assurance is to recommend after completion of this work, if any additional improvements are necessary to protect the health and safety of class members. This office is pleased to report that a designer for this work has finally been selected and that DMR is now prepared to proceed with direct management of this project.

The project's starting date has still not been set, however. The Office of Quality Assurance requests that DMR provide a time schedule that will ensure expeditious completion. Once project design is complete, this office will be in a better position to evaluate what additional work is required at the facility.

### STATUS OF DEFICIENCY CORRECTION IN RECENTLY RENOVATED BUILDINGS

As reported in August, 1987, several renovated campus buildings have had either long standing deficiencies or problems related to the failure of contractors to complete their work. This section provides an update on some of the major issues that still require attention.

### Package B Buildings

These eight buildings underwent renovation from May, 1984, through late 1985. The renovation process was fraught with controversy and included a decision to invoke the performance bond on the original contractor. Although use and occupancy was taken of six buildings in late 1985, several items that were either unfinished, deficient, or necessary but not included in the original contract, still needed to be done. A list of those items was finally drawn up in February, 1987, and plans were put into motion to carry out the necessary work. Unfortunately, it has taken much longer than first planned to do most of this work.



As of this writing, DCPO has finally awarded the contract for the non-emergency parts of this project and the contractor is on-site. Quick action must be taken so that the contractor can move expeditiously toward completion. The contract calls for completion within 120 days. Because these buildings are all in use, the work will have to be scheduled carefully to limit disruption to class members.

In addition, some problems initially identified as requiring immediate attention have still not been fully resolved. Of particular concern are the bad odors in one side of Seguin Hall. Attempts to solve this problem have failed. There has reportedly been some reduction of odor through various measures including more effective housekeeping, but the basic problem still remains. Apparently, the only solution is to reverse the ventilation system in the building so that it circulates external rather than internal air. The Division of Capital Planning and Operations and DMR are currently deliberating on how to proceed with the solution. Given the long standing nature of this problem, this office expects swift action, and requests that DMR and DCPO report on their efforts, including timelines, for accomplishing this goal.

#### Package A Buildings

These buildings, reopened after renovation during 1983, have had several problems associated with poor construction, equipment quality, and inappropriate design decisions. Parents and school officials remain concerned about many of these problems. This office's August, 1987 report made reference to many of these issues, including elevator problems in Tarbell Hall, windows falling out or not staying open in various buildings, and concerns that the HVAC systems may not be functioning properly.

The window issue presents serious problems for the school and for the people in affected buildings. It is a potential hazard and inconvenience, and should be corrected immediately. Window replacement was given a high priority by DMR in its FY89 Capital Budget request. It is also included in the House I Budget request, but is among a group of several items recommended for study from a pool account. The Office of Quality Assurance therefore recommends that every effort be made to correct this problem as soon as possible.

Unfortunately, little effort has been made to correct the other problems cited. Elevator problems persist in Tarbell Hall, and parents continue to complain about temperature control in most of these buildings. This office recommends that the Secretary of Human Services direct DMR to identify all remaining building deficiencies and report on its efforts to resolve them.

## REPLACEMENT/RENOVATION OF FOOD SERVICE BUILDING

The need to provide Fernald with a modernized food service facility and system has been well documented. At the time the court issued its final orders, a study was under way to determine the most appropriate type of facility and equipment. The study's completion date was initially projected for February, 1987. The court's final orders required that upon completion of the study, the state was to take all steps necessary to provide an adequate food service.

It is taking much longer than anticipated to complete the study. The Department of Mental Retardation has not approved the final draft of the study because of some grave concerns regarding its results and recommendations. In particular, the recommendation to renovate the existing food service building rather than construct a new facility is being questioned for several reasons including the following:

- \* The Department of Mental Retardation feels that the cost estimates that indicate a substantially lower cost for renovation are not entirely accurate;
- \* The disruption in food service during renovation could be more severe and lengthier than projected; and
- \* The school feels that the current food service building could be more appropriately used as a desperately needed central supply/maintenance facility.

The Division of Capital Planning and Operations has requested that the study designer review his original report and determine if changes should be made. The division has also assigned one of its staff to review the report. A final recommendation is expected to be made within three months.

The Office of Quality Assurance is quite sympathetic with DMR's concerns and supports further study of these issues. Nevertheless, this office is also very concerned with the extensive delay that has occurred in this project. In fact, as a result of this delay, a funding request was not made in the Governor's House I Budget. This could result in no further movement of the project for several years to come - a condition that would not be acceptable.

This office recommends that every effort be made to complete this study. Once complete, funding will have to be found immediately to proceed with design and construction. A decision on how to proceed should be made prior to final passage of the FY89 Capital Budget. The Office of Quality Assurance recommends that the Governor consider requesting funding for this project at that time.

## PROVISION OF CLIMATE CONTROLLED ENVIRONMENTS

The court's October 9, 1986 disengagement order included a requirement that the state provide climate controlled environments to people living at Fernald who needed it for medical reasons. In response, the state submitted a plan which included the installation of window air conditioners at several locations in Wallace, Seguin, and Belmont buildings. The Department of Mental Retardation reports that plans are currently being developed to install some additional units in these buildings as well as a few in other buildings on campus.

This office did not accept DMR's plan for window unit installation as an adequate long-term solution. While it provides some short-term relief from the summer heat, it does not provide full temperature or humidity control. On May 2, 1987, the Office of Quality Assurance requested that DMR more thoroughly review this situation and then develop a new plan, including timetables, to provide adequate climate control. The Department of Mental Retardation has yet to submit this plan or a status report of its development. The Office of Quality Assurance reiterates its request for this information. Given the intense needs of the persons who could benefit from this project, it is imperative that DMR hasten to meet its commitment.

## CORRECTION OF CERTAIN FACILITY MAINTENANCE ISSUES

### Adequate Hot Water to Farrell Hall

This office indicated in its last report that problems with providing adequate amounts of hot water to Farrell Hall had been resolved. Unfortunately, the modifications that were made to the system did not alleviate the problem as expected. The facility has determined that a new continuous flow hot water system is the only way to provide enough hot water. The Department of Mental Retardation is in the process of identifying the funds to install such a system. Now that an apparent solution has been found, this office expects Fernald officials and DMR to rapidly resolve this problem.

### Templeton Heat

The aging boilers at the Templeton campus were re-tubbed last year as a temporary measure until they could be replaced. A designer has recently been contracted to conduct a design study, and DMR reports that the first phase of it is complete. The Office of Quality Assurance requests that DMR provide a schedule for both study completion and boiler replacement.



### Cottage Roof Top Heating and Ventilation Units

The 11 cottages on the Waltham campus are in dire need of new roof top heating and ventilation units. While this project is not specifically included in the court's final order, the problems associated with these units mandate their replacement as soon as possible. This is clearly recognized by state officials, who are proceeding with necessary steps towards replacement. Funding for replacement is included among the items requested in the FY89 Capital Budget. This office will continue to monitor this project to ensure timely completion.

### H. DEVER STATE SCHOOL

#### PLANS FOR REPAIR OF FENTON PORCH

The porch on the second floor of Fenton building is unusable and must be repaired. The structural problem that caused the damage must also be corrected to prevent long-term building deterioration. The Department of Mental Retardation originally planned to repair the porch and correct the structural problem at the same time. However, since resolution of the structural problems are much more complex and costly than first expected, DMR has decided to repair the porch immediately. While porch repairs are underway, the structural problem can be studied further to determine exactly what must be done. The Office of Quality Assurance requests that DMR provide a schedule for repair of this porch that will ensure its availability this summer.

#### COLTON HOSPITAL BUILDING

It has been well documented that Dever's outdated and severely deficient medical facility is insufficient. The state is in the process of planning an alternative to meet the health care needs of the people at Dever State School.

This process began approximately one year ago after Children's Hospital concluded that the current building could not be made into a modern medical facility. It was recommended that a needs assessment be conducted to determine the type and volume of future medical services needed before making plans for a new facility. This assessment was conducted in the fall of 1987 by a consultant under contract with DMR, and the results have provided the foundation for developing final plans.

This project is now ready to proceed to the next step of design study which should occur as soon as possible. This office is pleased to report that the House I Capital Budget includes a specific funding request for the design study and the design of this project. The Department of Mental Retardation has reported that it is doing the necessary preparatory work to ensure swift action upon passage of the capital budget. The Office of Quality Assurance will continue to monitor the state's progress in meeting this commitment.

#### SITE IMPROVEMENT PROJECT

Since most of the work under this site improvement project required much less design and engineering than at Fernald and Wrentham, progress has been more rapid. The Department of Mental Retardation reports that this project is now complete with the exception of some landscaping, and the installation of some additional lights.

In accordance with the court's order, this office will now review with DMR and Dever officials whether any additional work is required to ensure the health and safety of class members.

#### I. WRENTHAM STATE SCHOOL

##### STATUS OF RAYMOND HOSPITAL PROJECT

Construction of Wrentham's new acute care medical facility was to have been completed in the fall of 1987. Unfortunately, several minor yet significant delays have occurred in the final phase. It now appears, however, that Raymond Hospital is substantially complete, and DMR plans to take use and occupancy of the facility by March 30, 1988.

##### SITE IMPROVEMENT PROJECT

Wrentham's site improvement project has been proceeding without major problems. The design work has been completed, the contract went out for bid at the end of February, 1988, and construction is scheduled to begin by the end of March, 1988. The contract, which calls for completion within 120 days of commencement, should result in a completed project by July, 1988.

As with the site improvement projects at Dever and Fernald, the court's order calls for this office to evaluate, after project completion, the need for any additional work to ensure health and safety of class members. Now that that this project has proceeded to the construction phase, the Office of Quality Assurance will begin reviewing with DMR and school officials whether any such work is necessary.

## J. PREVENTIVE AND CURRENT MAINTENANCE; FURNISHINGS AND EQUIPMENT REPLACEMENT

There is a continuing need at the schools and in community programs for resources to provide for ongoing maintenance and replacement of furnishings and equipment. In both locations there is some capacity to correct problems as they arise. Often, however, these resources are inadequate to meet the needs as facilities and equipment deteriorate or emergencies arise.

In the community, many DMR contracted programs and ICF's/MR were furnished and equipped with special start-up funding. Once operational, however, they have had to find alternative sources of funding to maintain the physical structure and replace deteriorating equipment. Current systems do not provide for adequate reimbursement for such expenditures, making it very difficult to maintain quality environments. This is particularly problematic for older programs where deterioration is the greatest, and where overall program cost reimbursement rates tend to be the lowest.

Similar problems exist at the state schools where millions of dollars have been spent over the last several years to provide quality environments. The buildings that were among the first to be renovated now need new furnishings and equipment and require some major maintenance. In addition, as buildings have been renovated, very complex equipment has been installed that is costly to maintain and repair. While each school has some funding available under its operating budget for such expenditures, the needs have begun to far exceed the resources available under these accounts. In several locations there is now a visible deterioration in the quality of the physical environment resulting from a lack of resources.

There have been some recent stop-gap efforts to help in this area. For community programs, funding was available in FY88 to help reduce long standing licensing deficiencies. At the schools, some additional resources were added to the maintenance and repair subsidiaries in FY87 as a result of savings in other areas. This year, DMR is also hoping to make additional funding available through the use of previously unexpended capital appropriations.

However, unless long-term solutions to this problem are developed, there will be a continuing struggle to maintain current environments, and the quality of life for many class members will deteriorate. Solutions have already been proposed in some areas but none of those have yet to come to fruition.



The Department of Mental Retardation has proposed to the legislature that it be allowed to retain 1% of the state schools' Medicaid revenue, or approximately 1.2 million to partially fund the facilities' depreciation of plant and equipment. This office is not in a position to determine if the amount proposed is adequate. Nevertheless, it considers the concept to have great merit and recommends that it receive priority support by the administration.

A proposal has existed for almost two years that would enable contractors for vendor operated ICF's/MR to retain revenues through an increased daily rate for the purpose of maintaining the facilities leased to them by DMR. Unfortunately, this proposal has never received final approval. In addition, another proposal is needed to address the vast majority of community programs who own the property or lease it from private parties.

The administration must move expeditiously to establish ongoing mechanisms in this most critical of areas. Until solutions are found, facilities will continue to deteriorate, and consumers will be increasingly subjected to substandard living conditions.





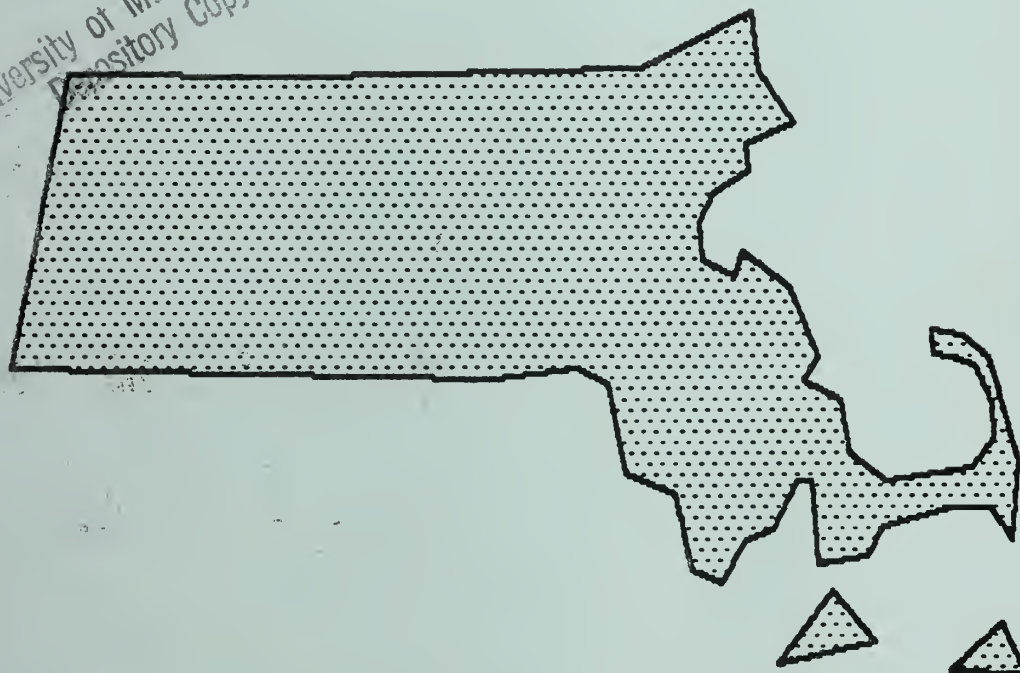


**THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE DEPARTMENT**

**OFFICE OF QUALITY ASSURANCE  
FOR THE MENTAL RETARDATION CONSENT DECREES**

**ANNUAL REPORT  
JUNE 1989**

GOVERNMENT DOCUMENTS  
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University of Massachusetts  
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**MONITORING SERVICES TO 6000 CLASS MEMBERS  
IN THE COMMONWEALTH**



**THE OFFICE OF QUALITY ASSURANCE  
FOR THE MENTAL RETARDATION CONSENT DECREES**

**ANNUAL REPORT**

**JUNE 1989**

Submitted to:

Governor Michael S. Dukakis

and

Philip W. Johnston  
Secretary of the Executive Office of Human Services

Commonwealth of Massachusetts

Submitted by:

The Office of Quality Assurance  
for the Mental Retardation Consent Decrees

Tom Wachtell, Director

Marianne Taylor  
Anne H. Hutchins  
Karin H. Nystrom  
Patricia A. Fleming





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## Introduction

The purpose of this study is to investigate the effects of the proposed system on the performance of the participants.

The study was conducted in a laboratory setting with a sample of 20 participants.

The participants were divided into two groups: the control group and the experimental group.

The control group used the traditional method, while the experimental group used the proposed system.

The results of the study showed that the proposed system significantly improved the performance of the participants.

The improvement was observed in both the speed and accuracy of the participants.

The study also found that the proposed system was easy to use and did not require extensive training.

The results of the study suggest that the proposed system is a viable alternative to the traditional method.

Further research is needed to confirm the findings of this study and to explore the long-term effects of the proposed system.

The study was funded by the National Science Foundation and the Department of Education.

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## APPENDICES



## INTRODUCTION

The court's final order of October 9, 1986 called for the Office of Quality Assurance for the Mental Retardation Consent Decrees (Office of Quality Assurance) to report annually to the Governor and Secretary of Human Services on the state's progress in meeting outstanding consent decree requirements. It also stipulated that six months prior to the end of the Office of Quality Assurance's three year term (this term shall expire on December 29, 1989) the Director was to recommend to the Governor whether the continued existence of the Office is necessary or advisable to assure quality of service to class members. This report is intended to serve both these purposes, and is respectfully submitted in accordance with the court's requirements.

It has now been 2 1/2 years since the court disengaged from active oversight of the state's compliance with the mental retardation consent decrees. At the time of disengagement, there was an expectation that within three years full compliance would be achieved. While much progress has been made, there continues to be several critical areas where the state has not met the mandate of the court's order and is not likely to do so by December, 1989. This report details the Office of Quality Assurance's concerns in those important areas. The most critical of these are the state's substantial delay in providing all class members from Dever State School with consent decree compliant housing, and their failure to establish the quality assurance safeguards and mechanisms that were recognized by the court as being essential for ensuring quality of care to class members.

This report recommends the establishment of a permanent, independent quality assurance office to oversee service delivery to all persons with mental retardation. It is proposed that such an office be established by statute, and report directly to the Governor and the Legislature. This recommendation is made, in large part, because of concerns that extend far beyond the question of consent decree compliance and touch on such factors as the historic disenfranchisement of persons with mental retardation, their struggle to be heard when they speak out on their own behalf or dependence upon others to speak out for them, and their lack of service options if they are not satisfied with the state's services. These factors lead this office to believe that, even if full compliance with the court's final order were achieved, permanent, external oversight is the only way ensuring quality of care to these citizens.





As the state approaches a new fiscal year it is still not specifically known what impact the FY90 budget will have on the delivery of mental retardation services. One thing that is certain is that the state's current fiscal problems will require critical decisions to be made about spending priorities throughout the state bureaucracy. The Office of Quality Assurance is hopeful that both the administration and the Legislature will continue to recognize the value in protecting the substantial investment they have made to improve the lives of persons with mental retardation.

The Office of Quality Assurance has now been in existence for approximately 2 1/2 years. Despite the fact that full funding for the office has never been realized, every effort has been made to meet the mandate delineated in Appendix A of the court's order. To the extent that the Office of Quality Assurance has been a positive force in improving the lives of class members, it is in large part, a result of the hard work, persistence and diligence of its dedicated staff.

Finally, as stated in previous reports, the assistance and cooperation of many parties including the Advisory Panel to the Office of Quality Assurance, the Governor's Office, the Legislature and its staff, the Department of Mental Retardation, the Executive Office of Human Services, the Executive Office of Administration and Finance, the Division of Capital Planning and Operations, the Executive Office of Communities and Development, and the state's many advocacy agencies continues to be greatly appreciated. Despite differing points of view among these groups, there has always been the common belief that the state's mentally retarded citizens should receive the best possible services and care wherever they may live.





## I. QUALITY ASSURANCE AND THE NEED FOR INDEPENDENT OVERSIGHT

### **A. RECOMMENDATION REGARDING QUALITY ASSURANCE MONITORING**

The court's October 9, 1986 disengagement order stipulates that in June, 1989, the Director of the Office of Quality Assurance, after consultation with the Advisory Panel, shall recommend to the Governor whether the continued existence of the Office of Quality Assurance is advisable or necessary to assure quality of service to class members. The recommendation contained herein is made in accordance with that order, and after careful consideration of the facts as they have been made available to this office.

Since 1973 the state's agencies that have participated in the provision of care to class members in the mental retardation consent decrees have been subject to varying levels and types of oversight to ensure compliance with consent decree requirements. Initially this function was provided directly by the federal district court. However, in 1978, as the case expanded in scope and as the magnitude of the state's commitments and obligations increased and were extended to the community service system, it was determined that the court needed assistance in this regard. The Court Monitor's Office was, therefore, created to monitor the state's progress towards compliance and to recommend to the court any actions that might be necessary to ensure that adequate housing and services were provided to class members. In 1986 the court determined that the state had achieved a level of compliance that made it unnecessary for direct court supervision. However, due to outstanding consent decree commitments, the court felt it necessary to have an office, reporting to Governor Michael S. Dukakis but with access to the court, to oversee the remaining tasks. With the cooperation of Governor Dukakis, and upon the issuance of Executive Order No. 268, the Office of Quality Assurance for the Mental Retardation Consent Decrees (OQA) was created to serve that purpose.

Despite their differences, a key to the effectiveness of the various monitoring structures mentioned above was that they were all independent from the agencies providing services. This allowed for greater objectivity and insulated them from undue influence. When necessary, it also provided direct access to mechanisms or persons that could redirect state agency efforts towards compliance. Any evaluation, therefore, of a continuing need for an office such as OQA must really be considered within the larger question of whether there continues to be a need for such external and independent oversight.

# THE HISTORY OF THE UNITED STATES OF AMERICA

BY JAMES M. SMITH, D.D., LL.D., F.R.S., F.R.A.S., F.R.I.C., F.R.G.S., F.R.H.S., F.R.S.E., F.R.S.M., F.R.S.N., F.R.S.O., F.R.S.I., F.R.S.A., F.R.S.C., F.R.S.D., F.R.S.F., F.R.S.G., F.R.S.H., F.R.S.J., F.R.S.K., F.R.S.L., F.R.S.M., F.R.S.N., F.R.S.O., F.R.S.I., F.R.S.A., F.R.S.C., F.R.S.D., F.R.S.F., F.R.S.G., F.R.S.H., F.R.S.J., F.R.S.K., F.R.S.L.

The history of the United States of America is a story of the growth of a great nation from a small colony of English settlers in the early 17th century to a powerful republic in the 18th century. The story begins with the first English settlers in 1607, who established the first permanent English colony in North America. The settlers faced many hardships, but they persevered and grew in number. By 1776, the colonies had declared their independence from Great Britain and had established a new government. The new government was based on the principles of liberty and justice for all. The United States of America was born. The story of the United States is a story of the struggle for freedom and the pursuit of the American dream. It is a story of the courage and sacrifice of the men and women who have shaped the nation. It is a story of the progress and achievement of the United States. The United States is a great nation, and its history is a source of pride and inspiration for all who love it.

While it is essential that all agencies providing services have their own internal monitoring and quality assurance systems, it is important to understand that forces always exist within any organization which tend to limit its ability to objectively evaluate its own effectiveness, and to recognize problems when they arise. In the business world, organizations ultimately judge their effectiveness by whether the customer buys the product or not. However, this self limiting principle does not exist for state agencies providing services. Persons dependent upon state services have limited options if they are not satisfied with services. Most consumers with mental retardation are just learning how to speak out on their own behalf, while others cannot do so at all and must depend upon the hope that a family member or friend might advocate for their interests. This results in state agencies receiving little if any independent feedback on the quality of care for such persons.

Hence, to ensure the quality of services and protection of rights of consumers dependent upon the state's mental retardation service system, there is most assuredly a need for some ongoing external mechanism that can objectively evaluate and oversee service delivery, provide advocacy, and assist in empowering consumers to advocate for themselves. This need exists not simply as a result of the consent decrees, nor because there are still some unfinished consent decree requirements. It exists because, as history has shown, the state's mentally retarded citizens are potentially among its most vulnerable. Moreover, despite the good intentions of any particular administration or Commissioner of Mental Retardation, these structures change while a solid quality assurance body would ensure continuity of adequate safeguards in a changing political environment. This way the public and the Legislature can remain fully informed regarding the quality of care.

As part of a recent outreach process this office prepared a survey and distributed it to family members, advocates, providers, and others with an interest in the mental retardation system. The purpose of the survey was to gather public opinion on mental retardation services and ways to ensure quality of service. We received 93 responses: 42 from relatives or guardians of persons with mental retardation, 6 from advocates, 2 from Department of Mental Retardation (DMR) employees, 42 from community based service providers, and 1 who did not indicate their status. (Please refer to Appendix A for a sample of this survey.)

When presented with a multiple choice question regarding the type of quality assurance structure they felt would be most effective, 6.5% responded in favor of a system internally controlled by DMR, 57.6% felt that a combination of internal and





external quality assurance activities would be best, and 27.2% believed all quality assurance efforts should be external to service providing agencies.

There are many issues reported upon within the body of this report that reflect the inherent problems associated with providing adequate services. Many of the concerns raised identify weaknesses in the service delivery system; weaknesses that even the most committed state agency official directly involved in service delivery would find difficult to identify so publicly. Yet, it is just such a regular airing of issues that is necessary to help ensure the system continues to respond to the needs of the persons it serves.

There are already several examples within the Commonwealth where more permanent, external oversight has proven to be an essential mechanism for protecting and enhancing the lives of people receiving services. The Mental Health Legal Advisors Committee, the Office of Handicapped Affairs, the Office for Children, the Disabled Persons Protection Commission, the Department of Elder Affairs (through their Ombudsmen Program), and the Massachusetts Commission Against Discrimination are just some of the state agencies that have been created to ensure quality of care and protection of rights. While each serves a different purpose, they all function as professional, external, objective monitors, who ensure that state agencies directly responsible for the provision of services to a particular segment of the population do so in a manner that provides adequate safeguards to its consumers.

While the details of the structure and authority of such an office for mental retardation services should be carefully reviewed and crafted to ensure maximum effectiveness, it is the recommendation of the Office of Quality Assurance that the following broad parameters be incorporated:

#### Establishment through Statute:

The effectiveness of such an office will substantially be determined by its perceived authority and support. Establishment through statute would strengthen its effectiveness by showing both strong broad range support and by insulating it from the influence of any particular administration. It would also satisfy the need for permanency.

#### Complete Independence from Agencies Providing Service:

To be effective, this office must be completely external from the agencies that it is monitoring. This would help ensure greater objectivity and responsiveness to the needs of consumers.

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While such an office would work closely with the Department of Mental Retardation and the Executive Office of Human Services (EOHS), it must also remain completely separate and insulated from potential influence. Direct access to the Legislature and the Governor will be a key factor in ensuring full disclosure and adequate protections.

#### Responsibility for All Persons with Mental Retardation:

The distinction between class members and non class members over the last 18 years was an unavoidable outcome of the consent decree process. However, now that the implementation of specific remedies specified in the decrees is almost complete, the main focus of such an office would be to provide ongoing protections in accordance with state and federal regulations and statutes governing the provision of care. Services to all citizens with mental retardation are subject to these requirements and it would therefore be appropriate to expand such an office's oversight functions to all segments of that population.

#### Broad Powers and Authority:

The office's powers and authority should be sufficiently broad so as to ensure that it has the ability to gather all necessary information, and, when necessary, has direct access to avenues or persons that can redirect state agency efforts towards improving care or correcting problems as they arise. Such mechanisms, as the power of subpoena, and the ability to hold public hearings should be incorporated to strengthen access to information. In addition, direct access to the Legislature and the Governor would ensure proper consideration of the office's findings and recommendations. The office's director or chief administrator should be vested with the ultimate authority and power to carry out its goals and responsibilities in accordance with statutory mandate.

#### Input from a Broad Spectrum of Persons Interested in Services:

It is essential that the office have sufficient input from all persons for whom it has oversight responsibilities, and structures should be built in to ensure that this input is ongoing. Any groups established to advise the office should include a broad and balanced representation of persons, including service recipients, who represent consumers in all locations where services are being provided. It is essential that the advisory role be clearly defined, that members serve voluntarily, and that board members serve fixed, rotating terms.



## Functions and Responsibilities:

In general, the office's functions should include, but not necessarily be limited to: monitoring the quality of life and services provided to persons with mental retardation; providing individual advocacy; resolving complaints; evaluating investigations; analyzing mental retardation policy and service commitments; reviewing budgets of relevant state agencies; and interfacing with consumer groups and state agencies. The focus would not be to duplicate the state agencies' own quality assurance and monitoring functions, but through its review and inspection activities, determine the adequacy and effectiveness of these functions, and ascertain the extent of compliance with regulations and statute governing the care of citizens with mental retardation.

## Completion of Outstanding Consent Decree Requirements:

Appendix B of the court's final order includes within it a listing of various unfinished tasks the state is required to complete by December, 1989. Many of these items, such as the various capital projects are quite specific and once completed require no further review or monitoring. Others are more difficult to quantify and evaluate, but nevertheless, must be accomplished. The status of completion of many of these items is reported upon within the body of this report. Oversight of the completion of any of these tasks that remain unfinished should fall under this office's responsibility as well.

## Office Resources and Funding:

While there would be costs associated with adequately funding such an office, effective oversight would not require an excessively large number of staff. Funding currently allocated for the Office of Quality Assurance along with a reasonable additional appropriation would be sufficient. The actual amount necessary for effective operation would be dependant upon a more detailed scope of the office's responsibilities.

## B. QUALITY ASSURANCE MANDATE

"Quality Assurance", as applied in human services, comprises a broad universe of formal and informal activities and conditions. We would choose to define that universe as including any activity or condition that has the effect of ensuring that services provided to the consumer are:



THEORY OF THE EARTH

The theory of the earth is a branch of geology which deals with the origin and development of the earth and its various parts. It is a science which seeks to explain the processes which have shaped the earth and its features. The theory of the earth is based on the study of the earth's structure and the forces which have acted upon it. It is a science which is constantly developing as new discoveries are made and new theories are proposed.

THEORY OF THE EARTH AND ITS PARTS

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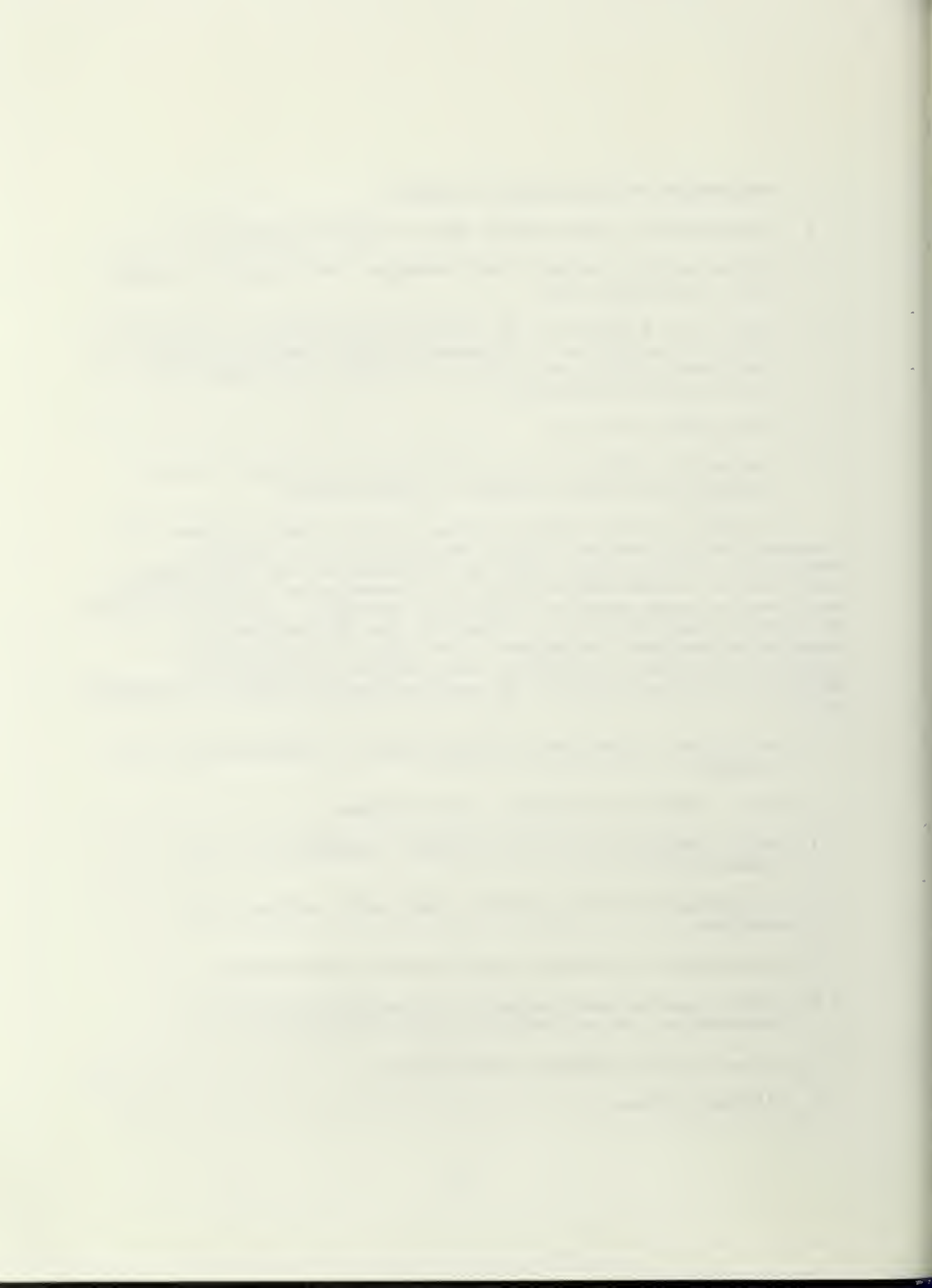
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- \* responsive to the person's needs;
- \* accountable to the person and to funding agencies;
- \* delivered in a manner that enhances the individual rather than diminishing her;
- \* based on a foundation of values that supports integration with the mainstream of community life, the preservation of individual rights and choice, and the development of individualized supports;
- \* cost effective; and
- \* ultimately effective in achieving the outcomes that are congruent with the consumer's stated goals.

To give a better sense of some of the types of formal and informal activities and conditions involved in "Quality Assurance" the following list of "safeguards" may be helpful. The list is a condensed version of a memorandum on what factors help make a human service a "quality" service. This was compiled by Michael Kendrick, the director of the "Normalization Safeguards Project" in Holyoke. We feel it represents an excellent overview of factors that contribute to quality services: (Please refer to the unabbreviated version in Appendix B.)

1. An ultimate unambiguous fixed point of responsibility for persons.
2. Small "service" settings and groupings.
3. Small specialized agencies deeply imbedded in local communities.
4. Arrangements that can permit and exalt personalized services.
5. Provisions to maintain stable staff involvements.
6. Highly concretized concepts and priority to social integration (valued social roles) for clients.
7. Valued family/familial involvement.
8. Citizen advocacy.





9. Voluntary values focused orientation, education, and renewal.
10. External oversight and monitoring.
11. Commitment of a percentage of resources, agencies and settings to projects of innovation and excellence.
12. Systematic design to diminish bureaucratization.

When asked to comment upon the type of quality assurance activity they felt would ensure a high standard of quality the respondents to our survey covered a broad range of issues (53 distinct answers) but certain issues were raised by more than one respondent.

ISSUE	# RESP
-- Monitoring teams composed of families and citizens	8
Licensing	5
Monitoring teams of both families and professionals	4
Performance based contracting	4
Personal advocacy	3
Better screening of residential staff	3

In preparation for the gradual disengagement of the Federal Court from active involvement with consent decrees, Judge Joseph L. Tauro issued a clear and resounding call for a comprehensive quality assurance system when he stated in his memorandum and order of October 9, 1986:

"Notwithstanding the substantial progress that has been made, there are a number of matters that must be resolved in order to ensure that full compliance is achieved and maintained. These items are delineated in Appendix B of the accompanying order. In addition, it is essential that there exist sufficient safeguards and mechanisms to ensure that class members continue to receive the services to which they are entitled. The defendants have committed themselves to establishing and maintaining such safeguards and mechanisms, and these too are identified in Appendix B."

With these words in mind, the Office of Quality Assurance has mainly concerned itself with the activity of external oversight and monitoring, and with DMR efforts to develop an accountable quality assurance presence within its own agency. This mission was clearly articulated in the enabling orders issued by Judge Tauro referenced above where the critical role of quality assurance in preserving the consent decree advances was stressed.

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### C. DEPARTMENT OF MENTAL RETARDATION'S QUALITY ASSURANCE EFFORTS

In its last two reports this office reported its dissatisfaction with the defendants' efforts to form effective quality assurance (QA) processes and urged DMR toward fulfilling specific tasks in this area, these included:

"Hiring staff at the regional and local service center levels of DMR management to ensure that quality assurance activities are carried out;

Conceptualizing and implementing a method to coordinate and computerize pertinent quality assurance data including licensing data, ISP data, contract requirements, on-site observations, Department of Public Health (DPH) surveys, and MSCB data;

Using coordinated quality assurance data to:

- Analyze and correct service gaps and deficiencies;
- Plan and budget needed services at the local, regional and central levels based on patterns of need and deficiency;
- Evaluate the effectiveness of services;
- Ensure that quality assurance processes are not duplicative or otherwise burdensome to vendors;
- Plan training curriculum;
- Provide technical assistance and support to vendors when necessary; and
- Recognize programs of excellence

Developing program standards that go beyond the minimal standards of licensing;

Licensing Specialized Home Care programs;

Certifying state operated Executive Office of Community Development (EOCD) programs; and

Developing and implementing a reliable measure of individual consumer progress." (pp. 34, 35 - Office of Quality Assurance for the Mental Retardation Consent Decrees - Annual Report - March 1988)

The chart below provides a condensed view of progress toward these initiatives, and other activities recommended to DMR by this office as necessary for a solid quality assurance presence:





INITIATIVE	STATUS	COMMENTS
Hire staff at regional/ local service center level	INCOMPLETE	No QA staff hired at local level. Four of six <u>regions</u> have QA staff who also have other major responsibilities. At the <u>central</u> level the QA director quit recently and two of four staff were laid off; Director position has no line authority over regional QA staff.
Coordinate and computerize QA data	INCOMPLETE	Data currently not coordinated either manually or by computer; no plan exists for this goal.
Utilize coordinated data for ongoing program evaluation	INCOMPLETE	Data not coordinated and so not available for this purpose.
Develop program standards that go beyond minimal licensing standards	INCOMPLETE	Process is underway. Input from groups external to DMR not yet solicited.
Accreditation of Day Habilitation Programs	COMPLETE	Programs accredited by the Commission on the Accreditation of Rehabilitation Facilities or the Accreditation Council for Developmental Disabilities.
License Specialized Home Care Programs	COMPLETE	10% of sites receive licenser visit. All agencies receive license.
Certify State Operated Apartments	COMPLETE	Increase in licensing staff has enabled DMR to meet this goal.
Develop and implement reliable measure of consumer progress	INCOMPLETE	DMR group developing this project laid off - (Policy & Planning). Part time consultant still working on this project.
Institute Performance Based Contracting	PARTIALLY COMPLETE	This process will be initiated on a voluntary basis in FY90 for existing programs, and will be mandatory for new programs.
Implement stricter Licensing Enforcement Policy	COMPLETE	New policy was implemented in October, 1988.
Implement Medication Administration Regulations	INCOMPLETE	Key person on this project left DMR in 1988, and not replaced until 1989.

THE HISTORY OF THE UNITED STATES OF AMERICA

BY HENRY ADAMS



IN THREE VOLUMES

VOLUME I

THE FOUNDING OF THE NATION

1776-1789

NEW YORK: HARVARD UNIVERSITY PRESS

1902

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Implement method of identifying unmet class member needs at local, regional and central level in a form useful for planning purposes	INCOMPLETE	Computerized quarterly report of unmet needs never converted to include class members. Other methods insufficient.
Increase licensing staff to adequate levels	ONGOING	Sixteen Licensors have now been hired as originally planned. Licensing Director still considers staffing to be inadequate.
Initiate "Rogers" reviews for community class members on psychotropic drugs	INCOMPLETE	Court reviews have been rare exceptions in community settings.
Provide guardians for class members in nursing homes who are without families, and who are not capable of informed consent	INCOMPLETE	See subsequent discussion.
Strengthen ISP process	COMPLETE	Excellent work completed on this initiative.
Develop agreements with Service Coordinators regarding reasonable caseload sizes	INCOMPLETE	See subsequent discussion.
Implement Family/Citizen Monitoring Process	COMPLETE	The frequency of reviews varies across the state.
Strengthen Human Rights System	INCOMPLETE	Recent efforts initiated to protect Human Rights Officers against retaliation - efforts still required to strengthen system in community.

The previous chart illustrates that the Department of Mental Retardation has not succeeded in establishing the means of ensuring the quality of services provided to the consumer. With no means of measuring the impact of services on the individual, collecting and synthesizing diverse quality assurance data, and ensuring that providers meet quality standards of service delivery, quality assurance is not a functional aspect of the current Department of Mental Retardation.



1. The first part of the report deals with the general situation of the country and the progress of the work during the year.

2. The second part of the report deals with the results of the work during the year and the progress of the work during the year.

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Some aspects of the system that are operating and safeguarding consumer care are in trouble within DMR. First, the "fixed point of responsibility", the service coordinator system, is a system that is threatened by ever increasing caseloads and role diffusion. A written plan (The Commonwealth of Massachusetts Alternative Disposition Plan for Persons with Mental Retardation and Developmental Disabilities, January, 1989) provided to the Federal Government detailing the state's initiatives in meeting the Omnibus Waiver Reconciliation Act of 1987 (OBRA) nursing home reforms, projected intensive commitment of service coordinator resources. In this plan DMR agreed to provide service coordination and Individual Service Plans (ISP's) for an estimated 800 persons in nursing homes by April of 1990. We have been told that at this time DMR has no plans for hiring additional service coordinators to meet this demand. Such an influx of new cases will be impossible to accommodate without greatly diminishing the intensity of service coordination attention to each person.

While caseloads for Qualified Mental Retardation Professionals (QMRP) in state facilities (the counterparts to service coordinators in state schools) are kept to approximately 25, caseloads in community settings range from 30 to 140 across the state, with an average of 43. The concern about the danger of unreasonable caseloads was brought out in our last report (p.40). There has been little progress in DMR discussions with service coordinator representatives with respect to containing caseloads at manageable levels. Service coordination, and the service planning process are key elements in both the consent decrees, and the Title XIX regulations and, if done well, represent a fundamental safeguard to the quality of care. It is incumbent upon DMR to seek ways of strengthening the system. The Office of Quality Assurance recommends once again that, through discussions with service coordinator representatives, reasonable caseload limits are instituted, and that DMR aggressively seek federal financial participation for the funding of additional service coordinators.

We commend DMR for initiating quality enhancement activities. Each region was provided with \$30 thousand to assist in establishing Quality Enhancement Networks - a network was envisioned as a group composed of providers, staff, advocates and interested citizens that would become the core network from which quality of life training and strategizing would proceed. Each region was permitted flexibility in determining how best to conduct quality of life enhancement activities. One region sponsored a two day conference on the topic of enhancement of quality of life and has fostered networks at the local and regional level. Another region has focused on nurturing 1:1 relationships between persons with mental retardation and non-



handicapped persons. In another region, monetary grants were extended to individuals to improve their quality of life. While these efforts are innovative and carry much promise for potential enrichment of people's lives but, they are still in a formative period.

Advisory boards at the local service center (LSC) level have been extremely slow to take shape. Many are just now beginning to function.

The "Policy and Planning" group at DMR was completely disbanded in an effort to meet legislative demands for savings in the fall of 1988. We are not encouraged by this type of cost saving at a time when the new department is in a formative period and in great need of leadership in this area.

On more than one occasion we have encountered a troublesome disregard at DMR for the active protection of people's rights. While it is clear that human rights officers within the department actively seek to protect consumers' rights, it is also clear that this protection is limited when it conflicts with administrative priorities. This issue is a substantive factor in our decision to recommend external oversight.

Also, in our pursuit of quality care for class members in nursing homes, we have urged DMR to find some way to provide legal guardians for class members who are not capable of making informed decisions and who are without friends or family to help them. This has not been done. Moreover, DMR has pushed ahead with federally mandated nursing home reforms that will require class members and others to make significant life choices, such as whether they wish to continue living in a nursing home or live elsewhere, without providing legal guardians for those incapable of making choices, or providing for an "appeal" process as required by federal legislation.

Another example of this indifference to individual rights was observed in DMR plans to transfer persons from Dever State School to other state schools in order to meet deadlines for closing buildings because promised community programs were not yet ready. Such transfers were addressed in the Dever Consent Decree (paragraph 46) and it was noted that "... However, the plaintiffs do not agree that such transfers will be necessary and appropriate and they reserve their right to raise objections with the Court." After thorough discussions with DMR, this office agreed that such transfer plans should be restricted to only those persons with actively involved families or guardians who were in favor of the transfer and that a promised community





program must be offered to the individual upon its completion. In each case this office contacted the family to ensure that their decision was freely made, and that appropriate options were offered.

In some cases we learned that the guardian had refused the transfer because, among other objections, they were not assured of an eventual community program for their ward. In another case, we learned that the family had been contacted but had not been presented with the option of subsequent community placement for their son until we explained that option. This family was concerned about their son, but they lived in another state and they had to rely on a social worker's judgement who had been deemed the "In State Agent" for their son. Our inquiries revealed that the social worker had not visited the proposed placement site and that no member of the ISP team had been given this opportunity. We insisted that this placement be delayed until members of the ISP team and the social worker had visited the proposed placement site and discussed the recommendation at an ISP Team meeting, and until a definite community placement was made available. Our insistence upon this plan met with extreme resistance from the highest level of state school administration but was finally agreed to.

Recently, this office became involved with a case where a vendor agency employee who was designated as the "human rights officer" was terminated after filing a human rights complaint. It appeared that the agency retaliated against her for her human rights activity. This case raised many concerns about the integrity of the human rights process and the need for reform of this system. We are pleased to report that Commissioner Mary A. McCarthy of DMR has agreed to issue a strong memorandum to the field regarding this issue, and is including language in provider contracts to prevent such occurrences. She has also agreed to strengthen regulatory language in this regard as well. The Office of Quality Assurance will be monitoring these commitments and continuing discussion with the Human Rights Advisory Council in the coming months.

Further, we would recommend that an external office of quality assurance undertake a study to determine if human rights personnel should be substantially separated from the DMR administration while remaining physically within its programs.

These types of struggles continue even as this report goes to production and serve as a continual reminder that without external, empowered advocates, class members and others with mental retardation do not have the voice they need in important decisions.



#### D. INVESTIGATIONS AND DEATH REPORTING SYSTEM

In accordance with the court's October, 9, 1986 order, the Office of Quality Assurance receives copies of all complaints made and investigations conducted on behalf of class members under DMR regulations (104 CMR 24.00 -.13). This office also receives notifications of the death of any class member as well.

#### INVESTIGATION PROCEDURES

From January, 1988, through May, 1989, there have been 440 complaints/investigations reported to OQA. At the outset, there was little consistency in such reporting, and there was particular concern that we were not even receiving many of the complaints filed on behalf of class members. This was particularly true for community class members. While the state schools appeared to be doing a more thorough job of reporting, there were problems there as well, particularly at Fernald State School. Reporting has improved within the last year from all locations, but it is difficult to determine what percentage of the formal complaints we are, in fact, notified about. In addition, in some instances we still receive incomplete information. Without additional staff resources for this office, it is not possible to judge to what extent community programs and state facilities are fully complying with the regulations which require the formal filing of complaints through the public log process.

In those locations where DMR has full time trained investigators, the investigation process is usually conducted in a thorough and professional manner. Our analysis suggests, however, that on a state wide basis, there continues to be variability in both the quality and timeliness of investigations. Many times there is also a notable time lapse between when the complaint is filed and when a final decision is made. The Department of Mental Retardation has a total of four supervising investigators in the Office of Internal Affairs. In addition, each state school and Hogan/Berry Regional Center has one full time investigator whose sole responsibility it is to conduct investigations at their own facilities. In the community there are only three full time investigators assigned, and some staff who perform other functions who have also received training in investigations.

This office is concerned that no mechanism currently exists which ensures full implementation of recommendations emanating from investigations. Neither the Office of Internal Affairs nor DMR program divisions formally track this information. Through our own follow-up activities, we find that some administrators





are vigorous in their pursuit of investigation outcomes, while others are far less aggressive. The Office of Quality Assurance, therefore, recommends that a formal procedure be established requiring the person in charge to file follow-up reports within an appropriate time, and that a tracking system be established to monitor compliance with this procedure.

#### CLASS MEMBER DEATH REPORTS

This office considers the review of class member deaths to be a critical and essential oversight function. From January, 1987, through May, 1989, a total of 179 class member deaths were reported to our office. Occasionally, there have been deaths that were not reported in a timely fashion to this office, but recent changes in the reporting procedures seem to have resulted in prompt notification.

It was clear upon initial reporting that the vast majority of these deaths were of natural causes; however, 37 required formal investigation, and additional information was requested in 15 other cases. While in no case has it been shown from these further inquiries that death was the direct and sole result of some negligent action, in three situations negligence has been identified as a contributing factor. In addition, other issues have surfaced which did not result in the death, but pointed to problems which required correction. Included among those were the need for more CPR training and for health needs to be addressed more assertively, the need to improve record keeping, and ways to ensure medical equipment is in good repair. In a few cases requests for further action have been filed with the Department of Public Health, the Board of Registration of Medicine, and the Board of Registration of Nursing.

When deaths are reported to our office, there is often insufficient information regarding the actual cause on the death reporting form. The Office of Quality Assurance met with DMR's Office of Internal Affairs in January, 1989, and made several recommendations for changes to the reporting format so that a more comprehensive picture of the circumstances leading to a person's death can be provided at the outset. A more detailed report at the time of death would likely substantially reduce the need for formal inquiry or investigation. Unfortunately, DMR has yet to initiate any of the changes proposed by this office.

This office is also concerned that no process currently exists to carefully review, in a systematic way, deaths that occur throughout the service system. The current regulations only call for the formal investigation of deaths when it is determined that the death was "medicolegal" - not of natural

THE UNIVERSITY OF CHICAGO  
DEPARTMENT OF CHEMISTRY  
JANUARY 1964

TO THE HONORABLE CHAIRMAN OF THE BOARD OF TRUSTEES  
OF THE UNIVERSITY OF CHICAGO

Dear Sirs:

I am pleased to inform you that the Department of Chemistry has received a grant from the National Science Foundation for the study of the properties of the liquid state. The grant is for the period of one year, from July 1, 1964, to June 30, 1965, and is in the amount of \$10,000. The grant is to be used for the purchase of equipment and for the salaries of research assistants.

The grant is being awarded to the Department of Chemistry, and the work will be carried out by the following persons:

Professor J. H. Duerksen  
Professor J. H. Duerksen  
Professor J. H. Duerksen

I am sure that the grant will be used to the best advantage of the Department of Chemistry and the University of Chicago.

causes or occurring under unusual circumstances. Given the latitude that exists in making such judgments, it would be extremely beneficial to have a mortality review committee to review cases of death to ensure that all necessary and appropriate actions were taken in an effort to provide adequate supervision, programs and services and medical care and treatment, and to strengthen areas where deficits are found.

#### **E. STANDARDS OF CARE IN INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED**

There are currently 61 community based Intermediate Care Facilities for the Mentally Retarded (ICF's/MR) in Massachusetts. Approximately 80% of the total number of residents are class members (390). The state schools are also certified as ICF's/MR. These programs are funded by a combination of state and federal monies and are regulated by the Commonwealth's Department of Public Health (DPH), Department of Public Welfare (DPW), and the Rate Setting Commission. The Department of Mental Retardation is also significantly involved as the exclusive source of referrals for these programs.

The standards of care which govern the provision of services in these facilities are commonly referred to as the Title XIX Regulations. They are established by the United States Department of Health and Human Service, Health Care Financing Administration (HCFA) in accordance with the statutory requirements of Title XIX of the Medicaid Act. The standards articulated in these regulations are specifically cited, along with those in the Capital/Community Plan, as the standards that are to govern the provision of care to class members.

In 1988, after an extensive review process, HCFA revised these standards so they would be more consistent with current trends in service. The main thrust of the reform was to stimulate active treatment for recipients by moving the surveying process away from case record review and into the realm of direct observation of daily program processes. This way programs are held responsible for their daily interactions with the people they serve, including the therapeutic or developmental services they offer, rather than the orderly nature of case records. This has been a most welcome and progressive shift in focus.

State agencies and community ICF's/MR providers should be commended for the level of cooperation and understanding they have demonstrated as they have faced the task of responding to





the new regulations. Cooperatively they have identified the fiscal and programmatic implications of the new standards and have been successful in achieving a smooth transition.

One area, however, remains in conflict with the revised standards; this is an aspect of the DPH survey process called the "Individual Professional Review" (IPR), or in the federal language this is referred to as the "Inspection of Care" (IOC). While other aspects of the survey process have been revised to conform with the new standard, the IPR/IOC process remains primarily as a record review and therefore does not reflect the intent of the survey standards as described above. As a result, the "active treatment" percentage that DPH generates in the IPR process is not indicative of the observed daily program processes.

The results of this review are referred to as an "active treatment percentage". This label is quite misleading because it reflects the written record and not the observed daily program processes that are the substance of active treatment. This office recommends that either the IPR/IOC review is changed to reflect the intent of the survey standards, or the use of the term "active treatment percentage" be discontinued.



## II. SERVICE PROVISION ISSUES

### A. STABILITY IN THE COMMUNITY SERVICE SYSTEM

#### STAFF TURNOVER AND VACANCY

As the mental retardation community service system has grown over the last ten to fifteen years, so too have the number of challenges faced by the provider community. While there are some encouraging changes in the area of contract reform (see discussion below), and regulatory restructuring for Medicaid providers, mental retardation agencies continue to struggle with many of the same financial problems that have plagued the system for years.

Since 1980, the problems associated with high staff turnover and vacancy rates in community programs have been well documented. While many factors have been identified as contributing to instability in this area, there is little argument that failure to provide adequate compensation is by far the most important problem. From FY86 through FY88, in response to this need, the Legislature with strong advocacy from Governor Michael Dukakis and Secretary Philip Johnston appropriated over \$36 million to upgrade provider staff salaries. In FY89 the Legislature made the wise decision to add to that another \$17.3 million to the budget. In addition, there have been numerous efforts by administration officials and DMR over the last several years to begin to address this issue through other means such as the creation of the Human Services Jobs Task Force and the Cabinet Level Education and Employment Council (details of these and other efforts have been reported upon in previous OQA reports).

Nevertheless, the evidence shows that these continue to fall far short of correcting the problem within the mental retardation provider community. The Department of Mental Retardation recently conducted a survey of a sampling of providers who in total have more than two thousand employees. Annual turnover was extremely high for all sizes of agencies with small agencies averaging 48%, and medium and large agencies averaging almost 40%. In some instances turnover rates were as high as 70%. These same agencies also reported that it took between three and four months to fill vacancies in direct care positions. This level of ongoing work force change and disruption in a program has to severely effect even the best of the agencies' ability to provide a stable and productive environment for the people they serve.



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MOST IMPORTANT AND INTERESTING  
PARTS OF HIS REIGN  
FROM HIS MARRIAGE TO HIS DEATH

BY  
JOHN BURNET  
BISHOP OF SALISBURY  
AND  
OF ELY  
IN TWO VOLUMES  
THE SECOND VOLUME

LONDON  
Printed by J. B. for W. B. and J. B.  
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Despite these clear and continuing signs of problems, neither the administration nor the Legislature appear ready this year to address this problem any further. If the FY90 budget passes as it currently is proposed by either the Governor or the House, there will in fact be a real cut in funds being made available to the provider community. These budgets do not contain any salary upgrading dollars, and the cost of living adjustment is based upon a 2.1% annual inflation rate (far less than the actual inflation rate). The Senate budget has no inflation rate adjustment at all. While OQA clearly understands the serious financial problems facing the state, it is very concerned that failure to fully address this problem will just exacerbate a situation which has already reached the crisis stage for many providers.

In an effort to try and improve the situation, DMR has recently undertaken several additional human resource development initiatives. Among them are expansion of its community college staff training program, analyzing the impact of differing fringe benefits packages, and hiring a provider recruitment coordinator. However, unless there is a continued commitment from the administration and the Legislature to come to grips with the inequities in the salary structure in community programs, this problem will worsen and quality of care will continue to be threatened. The Office of Quality Assurance, therefore, strongly recommends that the Governor take any and all steps he deems necessary and appropriate to ensure that the mental retardation community work force is stabilized.

#### PROGRAM COMPLIANCE WITH LICENSING STANDARDS

In OQA's March, 1988 report, profound concern was raised with regard to DMR's system for ensuring the timely correction of licensing deficiencies. As a result of the DMR/DMH split, efforts to implement a strengthened enforcement policy were delayed until DMR fully established its Licensing Office this past fall. Finally, in October, 1988, DMR began implementation of this policy and it appears they have begun to have some success in eliminating deficiencies and getting programs licensed.

Nevertheless, OQA is still concerned about DMR's ability to ensure correction of deficiencies which require additional funds to resolve. Most often these deficiencies relate to inadequate staffing, physical facility problems, or worn out furnishings and equipment. Section IV:B of this report contains a more detailed discussion of the two latter problems. In the FY89 budget, no funding for these critical needs was either requested by the administration or added by the Legislature. The same has

1. The first part of the paper discusses the importance of the study of the history of the United States. It is argued that a knowledge of the past is essential for a full understanding of the present and for the development of a sound policy for the future. The author points out that the study of history is not only a means of satisfying our curiosity about the past, but also a way of learning from the mistakes of our ancestors and of avoiding the same mistakes in the future.

2. The second part of the paper deals with the question of the role of the individual in history. It is argued that the individual is not a passive recipient of the forces of history, but an active participant in the process. The author points out that the actions of individuals can have a profound effect on the course of history, and that it is the duty of every citizen to be aware of his or her role in the history of the country.

3. The third part of the paper discusses the question of the relationship between the individual and the state. It is argued that the individual is not a subject of the state, but a citizen. The author points out that the state has a duty to protect the rights of its citizens, and that the citizens have a duty to participate in the government of the country.

4. The fourth part of the paper discusses the question of the future of the United States. It is argued that the future of the country is in the hands of the people, and that it is the duty of every citizen to work for the betterment of the country. The author points out that the future of the United States is not a matter of chance, but a matter of choice.

occurred in the FY90 budget process. While DMR has been able to resolve some problems through shifting of existing resources, this mechanism all too often stretches too thin the base resources used to fund existing programs on a yearly basis. It is essential that a process be created to ensure adequate funding for correction of licensing deficiencies on a regular basis.

#### HUMAN SERVICE CONTRACT REFORMS

Approximately two years ago the Office of Purchased Service (OPS) was established within the Executive Office of Administration and Finance (A&F). The mission of this office was to create a blueprint for the reform of the state's purchase of service systems such that its management and operation served to facilitate rather than hinder the delivery of quality services. Many of the recommendations emanating from this office hold a great deal of promise and if fully implemented should go a long way towards strengthening the provider community. (For a detailed description of proposals emanating from this office please refer to Progress Report to House and Senate Ways and Means Committees, February 1, 1988, Office of Purchased Service.)

The Department of Mental Retardation, one of the state's largest purchaser of services, volunteered to be among the first of the agencies to pilot some of the reforms. In FY90, DMR will begin implementation of one of the key elements of reform, Performance Based Contracting. This coming year it will be implemented on a voluntary basis for existing contracts and will be mandatory for any new purchased services. Performance Based Contracting is an effort to incorporate measurable performance objectives into the contract, such that contract compliance is, in part, assessed by evaluating the extent to which these objectives have been met. While performance measures will be different for various programs, DMR has developed a set of standardized general principles and performance objectives which are designed to establish the basic values it expects providers to support and the benchmarks they must meet.

The Office of Quality Assurance is encouraged by DMR's efforts in this area, and is hopeful that performance based contracting will eventually become a fully implemented component of contract reform. We will continue to monitor its progress over the next several months.

Another critical recommendation of the Office of Purchased Service, that DMR has begun working on, is the implementation of the concept of component pricing. Component pricing is a method of establishing a fair price for a service based upon what it truly costs to deliver such service successfully; paying the





provider the price that has been established; and giving the provider sufficient financial flexibility so that he can manage his resources effectively. While this is seemingly an easy and sensible enough concept, it is very difficult to achieve. Current payment systems work mostly on the concept of cost reimbursement with expenditures regulated by approved line item budgets. These budgets, however, have mostly been determined by what the purchaser feels it can pay rather than by the true cost of services. Therefore, complete information on the true costs of various types of services is lacking.

As a first step in the process of implementing the concept of fair pricing, DMR and OPS are in the process of working with the mental retardation provider community to identify true service costs. Once this is accomplished, OQA strongly recommends that the administration and the Legislature seriously consider full implementation. Many of the financial and staffing problems faced by human service providers today are the direct result of not paying them a fair price for the services they provide. This reform, in conjunction with performance based contracting, would ensure greater stability and encourage providers to reach for the highest levels of performance.

#### **B. CLASS MEMBERS AT RISK FOR INAPPROPRIATE/INSUFFICIENT SERVICES**

In this section we focus upon several groups of class members who we consider to be most at risk for insufficient or inappropriate services. These categories are based upon our extensive experience with individual class member problems brought to our attention, and the typical responses of the service system in solving these problems. Since January of 1987, the Office of Quality Assurance has addressed over 200 individual complaint situations.

1. Persons living in nursing and rest homes who are inappropriately placed.

##### **Risk Factors:**

- At risk for social isolation;
- At risk for neglect of developmental and other special needs of persons with mental retardation; and
- Insufficient resources for alternative placement and active treatment required by new federal regulations places these persons "at risk" for institutionalization.



2. Older physically infirm persons, labelled mentally retarded, who are living in the community.

Risk factors:

- At risk for institutionalization either into a state school or nursing home due to declining health, aging parents, or age discrimination.

3. Persons with dual diagnoses of mental retardation and a psychiatric or severe behavioral disorder:

Risk Factors:

- Insufficient individualized small home programs places at risk for institutionalization;
- Exposure to powerful drugs promotes risk of short-term and long-term side effects and makes health care more complex;
- Insufficient crisis services promotes risk of institutionalization;
- Presence of challenging behaviors limits pool of potential service providers; and
- Presence of challenging behaviors places people at risk for restrictive and/or aversive behavioral interventions.

4. Persons with complex medical needs.

Risk Factors:

- Insufficient community home programs with medical/nursing support and physical accessibility places group at risk for insufficient support and potential institutionalization; and
- Potential for long or frequent hospitalization are an economic disincentive to service providers.

5. Persons receiving aversive behavior modification interventions.

Risk Factors:

- Current state regulations provide insufficient safeguards and permit powerful, harmful interventions that may cause permanent physical and emotional damage or death; and





- All risk factors for item 3 apply here as well.

6. Persons in need of Guardians.

Risk Factors:

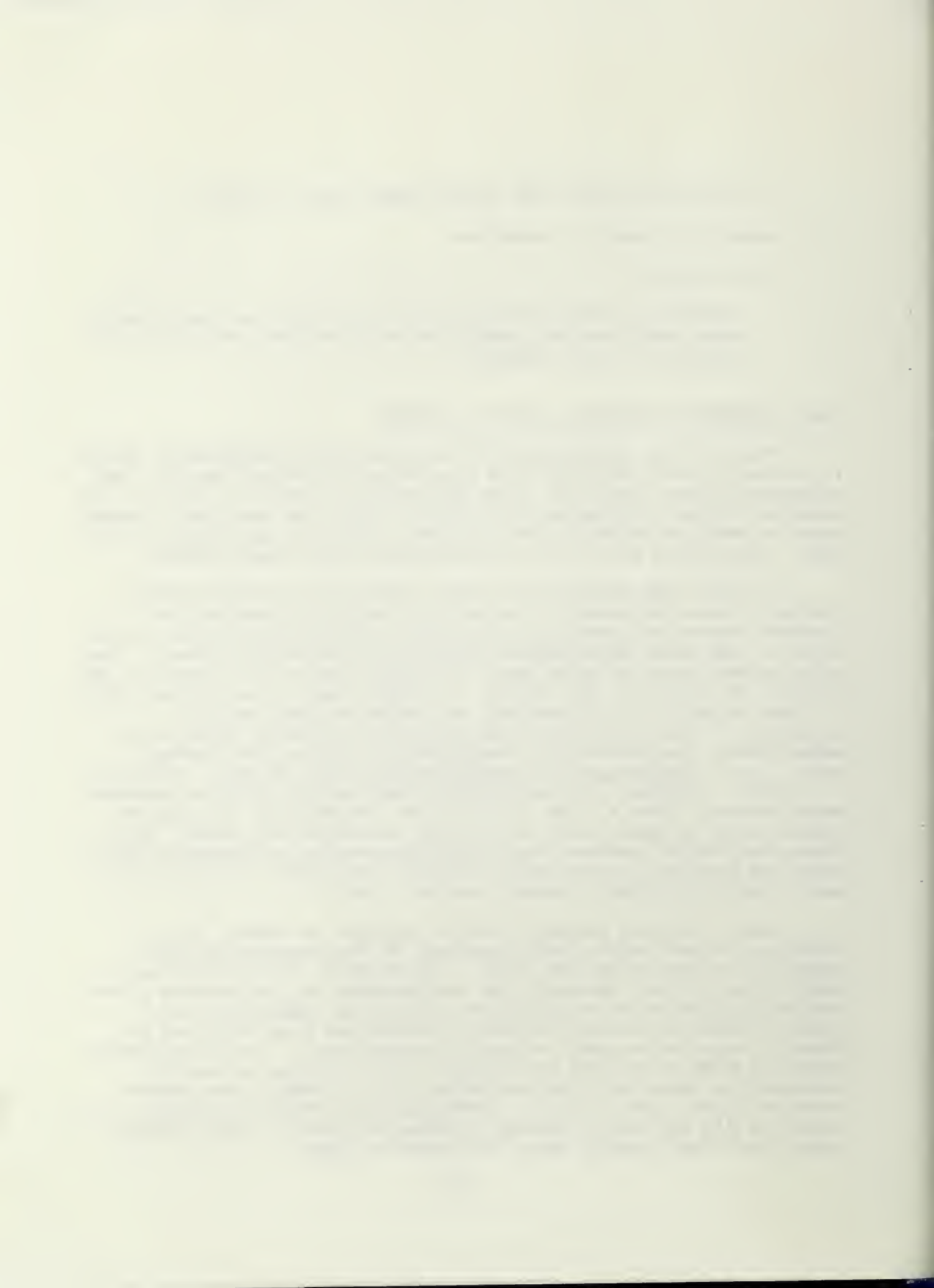
- Inadequate representation when decisions are being made about services can result in actions that are not in the consumer's best interest.

CLASS MEMBERS IN NURSING AND REST HOMES

Prior to the development of the community residential system initiated in the mid 70's, the Department of Mental Health (DMH) transferred many mentally disabled persons from state schools and hospitals into nursing and rest homes. For the most part, these persons were not elderly and received little or no follow-up from DMH. Among this group were approximately 215 class members.

In 1980, DMH undertook a pilot study of 49 class members living in nursing homes to assist the agency in meeting the consent decree obligations of providing Individual Service Plans (ISP's) and other appropriate services to the entire group. The pilot study revealed some harsh realities about the needs and the quality of life for this group. At that time it was learned that "...the majority of clients did not have serious medical problems....Most were placed in an ICF environment because of supervisory (psycho-social) requirements rather than medical ones". (p.2. Department of Mental Health Pilot Project, February 17, 1980). Further, it was learned that one out of four persons would benefit from a "less restrictive residential environment better able to meet their social and developmental needs" (p.3). Those that were assessed to be appropriate for a long-term care facility were not receiving the "active treatment necessary to meet their individual, special needs." (p.3).

These findings prompted DMH to attempt to secure the cooperation and active participation of the nursing and rest homes in implementing ISP goals. Although in most cases the facilities did not obstruct the development of the service plans, the participation of nursing home staff was negligible and contributions to active treatment outside of that required in federal regulations were virtually nonexistent. Such activities required more staff and more specialized training in mental retardation than they had available. As a result, even where service plans were in place, developmental, active treatment services did not occur unless a person attended a day program apart from the nursing home, and this was rare.



From 1980 to 1985, DMH made no significant advances in meeting the needs of this "under-served" group other than meeting the consent decree requirements for the provision of ISP's and offering day programs to a handful of nursing home residents. In 1984 the federal court's attention was focused upon this group when the plaintiffs filed a motion to transfer Belchertown State School and Monson Developmental Center class members back to their state school of origin. They cited the failure of nursing homes to meet Title XIX standards, to provide treatment consistent with the U.S. Constitution, or to provide active treatment as the primary reasons for the motion.

In response, DMH developed a work plan charting their intent to fully identify all class members living in long-term care facilities and to comprehensively assess their needs. This culminated in the 1984 Special Report on Service Needs of Class Members Residing in Nursing Homes. The report indicated that 217 class members were living in nursing and rest homes and the average age was 61.3 years. Of these it was reported that 50 people were refusing services, 29 were in need of day programs only, 13 were in need of residential services only, and 10 were in need of both day and residential services.

The report further disclosed that 57 people had never had annual Massachusetts Service Coordination Batteries (MSCB) in accordance with court agreements, and that 132 MSCB's were two or more years outdated (half were over four years old). It was clear that the needs identified in the report were discrepant with the residential and day program needs identified in the MSCB assessments. An analysis of the MSCB data indicated that many more people needed residential and day programs than the report stated. This discrepancy and the failure of DMH to conduct MSCB's in accordance with consent decree agreements, prompted the court monitor to undertake her own review of class members in long-term care facilities.

In this review, Court Monitor's Special Report, September, 1985, the monitor discovered that most nursing homes, due to low staff-to-patient ratios and the absence of requirements to provide active treatment, provided little more than custodial care. These findings were similar to the 1980 pilot report. It was found that in these environments the special needs of persons with mental retardation were not met and that they often were subject to institutional routines and conditions that greatly diminished the quality of their lives. For example, many persons shared bedrooms with three and four other people and complained of having little privacy and nowhere to keep personal belongings safely. Most people had very few opportunities for activities outside of the nursing home.



The first part of the paper discusses the importance of the study of the history of the United States. It is argued that a knowledge of the past is essential for a full understanding of the present. The author then proceeds to discuss the various factors that have shaped the development of the United States, including the role of the government, the economy, and the culture.

In the second part of the paper, the author examines the role of the government in the development of the United States. It is argued that the government has played a central role in shaping the country's history, from the founding of the nation to the present day. The author then discusses the various ways in which the government has influenced the economy and the culture.

The third part of the paper discusses the role of the economy in the development of the United States. It is argued that the economy has been a major factor in shaping the country's history, from the early years of settlement to the present day. The author then discusses the various ways in which the economy has influenced the government and the culture.

The fourth part of the paper discusses the role of the culture in the development of the United States. It is argued that the culture has been a major factor in shaping the country's history, from the early years of settlement to the present day. The author then discusses the various ways in which the culture has influenced the government and the economy.

A key variable in the quality of life was the extent of attention given to the individual by the local DMH areas. The monitor's review indicated that the level of involvement varied greatly from area to area; in some cases, records were out of date and ISP's non existent or overdue; in other cases, areas were very involved on a personal and programmatic level. In some instances it was discovered that class members reported as "refusing services" were indeed anxious to receive services. These findings indicated that the Department of Mental Health had failed to meet the consent decree obligations to this group and a concerted effort was necessary to provide adequate living and habilitation services wherever needed.

In 1986, DMH made a concerted effort to update MSCB data and analyze needs. This analysis yielded a total of 49 persons in need of residential services, and 43 in need of day programs. Subsequent DMR needs analyses reported to this office have adjusted these numbers up and down leaving us with great uncertainty about the reliability of the needs assessment process. The most recent estimate reported in the DMR Alternative Disposition Plan provided to the federal government in January, 1989, indicates that assessments show 101 (53%) of the 192 class members currently in nursing homes require alternative residences.

It was not until FY88 that monies were allocated to specifically service the needs of this group. The projected annualized fiscal commitment will be \$1,450,000 in FY90. Since 1988, 34 people have been placed in day programs outside of nursing homes and eight people have been placed in residential programs. In the same period of time four people have been moved from DMR community residences into nursing homes. The Department of Mental Retardation hopes to serve 29 more people in new community homes in the coming year.

Throughout these years the Department of Mental Retardation has continually struggled with the accurate identification of needs. Even when funds became available for alternative services, lack of up to date information made it difficult for DMR to make fiscal allocations in accordance with meaningful priorities and for local service centers to develop adequate programs. It's been a long and arduous process that has made painfully evident the necessity of reliable, computerized annual assessments, and the necessity of greater supervision and accountability measures for the activities of field based case management personnel. It is also our experience that without the relentless attention of an external advocate, the marginal gains described above would not have occurred for this disenfranchised group.



The struggles with basic case management activities witnessed in this document help us to understand, although not excuse, why so little progress has been made toward articulating progressive programs and policies for elders and others who are institutionalized in nursing homes. The Department of Mental Retardation has actively sponsored an "Elder Advisory Committee" that has produced a thoughtful profile of the ethical and programmatic principles that should inform the service system when planning needed services for this group, but the incorporation of these principles in departmental operations and policy has been minimal.

One program that does incorporate these principles and serves as an excellent example of what can be done for people living in nursing homes is the Community Entry Program run by the Nemasket Group. The New Bedford Local Service Center and the Nemasket Group are currently serving a small number of persons with mental retardation living in nursing homes in a unique program without walls. The staff of Community Entry spend time getting to know the persons they are serving, then based upon each individual's personal needs and preferences they will assist them in participating in community events and activities with non handicapped persons. In these integrated settings individuals have made friends, learned new skills, and have been welcomed into a world that has been waiting for them ever since they left it to live in a nursing home.

It is hoped that the new federal requirements under the Omnibus Reconciliation Act of 1987 (OBRA) will cause the Department of Mental Retardation to create innovative and responsive programs like the one described above for people who need "active treatment". Unfortunately, the federal government will allow DMR to take until 1993 to fully implement the necessary reforms. The Department of Mental Retardation has made a commitment that 263 persons with mental retardation living in nursing homes will be moved to more appropriate residences by that date. These requirements do not apply to those living in rest homes. Even with that time available for planning, our experience with the length of time needed to develop community programs, the DMR failure to make a full commitment to this group, the current fiscal constraints on the state, and the availability of state school "beds" that do not require "new money" leads us to conclude that persons found to be inappropriately placed in nursing homes will be at great risk for institutionalization in the state schools.

At this point DMR has made commitments to the federal government to complete the assessments mandated by OBRA (the PASSAR) for all people with mental retardation and developmental



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disabilities, and to provide service coordinators and individual service plans for approximately 800 persons living in nursing and rest homes by April of 1990. The Office of Quality Assurance is certain that such a commitment will be impossible to meet without eroding the current services unless a significant number of new service coordinators are hired. Case loads are already beyond maximum capacities and the addition of 800 people would be devastating. Moreover, initial experience with the assessment process indicates that 800 may be an under-estimate of the numbers of mentally retarded persons both in nursing homes or seeking nursing home services. The Department of Mental Retardation has informed OQA that there are no additional resources requested in the FY90 budget to address this need.

#### OLDER OR INFIRM PERSONS LIVING IN THE COMMUNITY

Persons who are older or infirm may require more daily support than their younger or more healthy counterparts. Such support often places great stress upon a family or residential program that may eventually jeopardize their ability to provide care to the individual. We have found that in many cases this is a heart breaking process because the family or agency does not wish to end their relationship as care giver but have no choice when resources are insufficient. It is also traumatic to the individual who, in declining health, wants to be cared for by those who are most familiar to him, but instead is sent to unfamiliar and unhome-like places like nursing homes or state schools. We would urge the Department of Mental Retardation to adopt the guiding principle of providing support in an individual's home to allow them to live out their lives in this important place, their home.

#### PERSONS WITH DUAL DIAGNOSES

It is not known to this office how many class members suffer from serious emotional problems in addition to the condition of mental retardation. However, it is clear that those with dual diagnoses require a unique support system that relies upon the combined expertise of service providers from the Departments of Mental Health and Mental Retardation. The services that are commonly necessary to adequately support persons with severe psychiatric needs include:

- \* Intensive service coordination;
- \* Individualized program design;
- \* Residential services in extremely small groups (2-4);



- \* Highly trained residential counselors with expertise in mental health, mental retardation, and crisis prevention;
- \* Psychiatric outpatient and inpatient services;
- \* Good clinical support and guidance within the agencies running the program; and
- \* Flexible home care situations that can afford to retain a person's place in the program even if they must leave home for treatment in an acute care setting for some length of time.

Historically, there have been difficulties in serving this unique group due to the need to draw upon the expertise and resources of two separate service systems, and the reality that neither system has sufficient resources to serve its own constituency. Competition for scarce resources has frequently impeded the cooperative spirit and coordination necessary to ensure that an individual receives the right care in an environment of continuity.

The 1986 legislation which split the Department of Mental Health (DMH) and created a separate Department of Mental Retardation (DMR) assigned primary responsibility for dually diagnosed persons to DMR. Later, the legislative committee overseeing the split found that the DMR split plan did not adequately address how the service system would meet the needs of the dually diagnosed persons and requested a special report on this matter.

This report, completed in April of 1988, contained commitments necessary to better serve this group. It is a disservice to the care of these persons that many of the service initiatives described in the plan have not received the necessary financial support to go forward. For example, it was expected that by now each DMR region would have clinical teams and emergency respite beds to support persons with dual diagnoses in community settings. Only two of six regions have such teams although Region VI has requested proposals for this service. Unfortunately, in order to fund the Region VI proposal, money was taken from their family support program.

Specialized inpatient mental health units for people with dual diagnoses were planned at five state hospitals. Only two exist, one at Medfield State Hospital and one at Worcester State Hospital. Medfield is closed to admissions, and Worcester has been faced with very serious problems in their standard of care. Also, on the DMR side, the "specialized treatment programs" (12 beds planned for each region) have not been developed to date.





The failure to develop these treatment options has placed tremendous stress upon the system to find appropriate inpatient services for persons with mental retardation in acute psychiatric distress. In many situations persons are admitted to medical/psychiatric units where mental retardation is poorly understood. In one such case a class member who was incapable of speaking up for himself and of doing his own laundry lost all his clothing and was dressed out of a common pile of worn and ill fitting clothes. He was later discharged to a rest home, but was unable to take his medications, nor were staff licensed to administer them to him. This resulted in the reactivation of the condition he was originally hospitalized for; it was a set up for failure.

In other cases, persons are admitted to the state schools that are not equipped to handle acute situations; in such cases special staffing arrangements have to be made and these staff are generally not trained to deal with acute psychiatric situations. In some cases medically fragile persons have been housed in close proximity to persons capable of harming them. Even the most recently built quarters at the state schools are not equipped to safely manage aggressively violent persons. Other persons in acute emotional distress may end up in obscure and isolated areas of the state school where they are out of the main stream of things. In one such case a young man with ambulation problems was placed in a room on a floor housing largely unoccupied administrative offices. He was often physically restrained and the isolated quarters diminished opportunities to ensure that restraint was appropriately used. When in good spirits and capable of moving about, he was often limited to movement in a single hallway.

In some cases, the inability to access the right therapeutic environment has forced people with emotional problems into homelessness. One class member living in a boarding house was provoked into a fist fight when his privacy was violated. As a result he was evicted and in an agitated state; the community mental health center in his area would not admit him nor would respite programs (fearing that other persons in residence would be harmed). Service coordinators sought unsuccessfully throughout the night for a place for him to stay. He was forced to live transiently in shelters until he received programmatic support in finding an apartment and maintaining it.

Of the 160 persons with mental retardation that DMR has agreed to move out of DMH state hospitals in the April, 1988 report, 24 have moved to state schools or regional centers for the mentally retarded. In some cases this has placed a great strain on existing resources due to the extraordinary needs of the person admitted. In one such situation a 64 year old man was transferred from a locked ward at Danvers State Hospital to the

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totally open environment of Templeton Colony. He eloped into the surrounding woods on several occasions thus necessitating a 1:1 staff assignment. Later suicide attempts continued the need for this intensive staffing. It is currently recommended that he return to Danvers State Hospital but DMH refuses to readmit him.

A tremendous disadvantage to the development of appropriate service models for this group has been the inability of DMR to accurately determine the number of people in this category, the types of individualized services they need, and the existence of such services in a particular area or region. Certain basic questions must be addressed in order to plan and allocate resources, for example: How many persons in a particular region will require inpatient psychiatric care each month? Which inpatient units in that region are equipped to meet their needs? How many people will need some form of specialized after-care and where can that care be found? It is clear that these types of questions must be answered before the development and allocation of resources for this group can be sensibly undertaken.

Current leaders must also make some hard decisions that will have far reaching effects on the service system. Will the DMR replicate mental health services in its state schools or will it use the existing network of community based and state mental health facilities to serve the needs of persons with dual diagnoses? How do generic services compare to state mental institutions - what are the advantages and disadvantages? Is there a better treatment answer for persons with dual diagnoses than long-term institutionalization; if so, what does that look like and how can long-term institutionalization be avoided? These questions require thoughtful consideration in a process that introduces a variety of view points.

It is recommended that a diverse committee be established that will represent the views of government, service providers, service recipients, clinicians, and advocates to address these important policy matters.

#### PERSONS WITH COMPLEX MEDICAL NEEDS

In our March, 1988 report, this office discussed issues affecting medical care for people with mental retardation in this state (pp. 16-18). In that report we stressed: 1) the importance of issuing the draft regulations that will control the administration of medications by non medical staff in community programs and providing training in this area; 2) the need for trained health care professionals to provide consultation to community programs; and, 3) the necessity of bringing community programs into compliance with court mandates regarding the use of





psychotropic medications. There have been no advances made in these areas. As a result we continue to be deeply concerned about the quality of health care provided to persons receiving medications with more complicated health profiles. The high turnover and vacancy rates for staff in community programs means that inexperienced, unfamiliar personnel are frequently and pervasively present throughout the system. This fact raises the urgency around these issues.

#### PERSONS RECEIVING AVERSIVE BEHAVIOR MODIFICATION INTERVENTIONS

Despite the fact that there are only a small number of class members in the state who are exposed to very restrictive and/or very punitive behavioral treatments, these interventions by their nature require strict scrutiny. The Executive Office of Human Services had made vigorous efforts to eliminate the use of the most severe of these techniques but, regretfully, has been unsuccessful.

While the Office of Quality Assurance applauds the administration's efforts in this regard, we continue to view it as ethically and therapeutically incorrect to permit the use of behavior modification techniques that are physically and/or emotionally painful. These interventions, along with certain other aversive techniques, are known as "Level III" interventions under the Department of Mental Retardation's Behavior Modification regulations (104 CMR 20.15).

These objections, and the fact that certain class members are exposed to the most intrusive and bizarre varieties of these techniques prompts this office to pursue a two-fold strategy in this area. We strongly support, and recommend that the Governor and Secretary of Human Services support a bill currently before the Legislature that would ban the use of painful aversive techniques. (Written testimony submitted from this office to Joint Committee on Human Services and Elder Affairs on this matter is included as Appendix C.)

However, in the interim, to ensure that whenever class members are subjected to aversive behavior modifications techniques, we are reviewing such practices to ensure strict enforcement with the existing regulations. These regulations were approved and adopted on July 1, 1987.

These regulations have been criticized as insufficient safeguards given the nature of the techniques in use. For example they fail to emulate the strict standards for "consent" established in the regulations governing research with mentally disabled persons (104 CMR 13.00), and they excuse those

THE UNIVERSITY OF CHICAGO  
DIVISION OF THE PHYSICAL SCIENCES  
DEPARTMENT OF CHEMISTRY  
530 CHICAGO  
CHICAGO, ILL. 60637

TO THE EDITOR OF THE JOURNAL OF THE AMERICAN CHEMICAL SOCIETY  
FROM THE DEPARTMENT OF CHEMISTRY  
UNIVERSITY OF CHICAGO  
CHICAGO, ILL. 60637

RE: [Illegible Title]  
[Illegible text]

[Illegible text]

[Illegible text]

[Illegible text]

restraint and seclusion procedures used as behavior modification techniques from compliance with the seclusion and restraint requirements in 104 CMR 20.02 and 104 CMR 20.08 (See Moriearity letter to DMH - Appendix D).

These weaknesses are further compounded by the Department of Mental Retardation's failure to implement the regulations in a timely and effective manner. This office has periodically sought and received information regarding implementation that confirms a failure to expeditiously enforce the standards and procedures specified. Certification procedures for agencies/institutions utilizing the most intrusive techniques (Level III) did not begin until the summer of 1988. The Central Advisory Committee was not established until January of 1989 and to date, the state has not fully complied with the regulatory requirements for seeking court consent for implementation of Level III techniques or appointing guardians where necessary although we have been informed that plans are underway for the court reviews.

This office has initiated a case by case review of class members receiving Level III interventions. It has been reported that ten class members in state schools and two at a community program are receiving Level III programs and that no class members in community residences or work programs are receiving Level III interventions.

Of the ten persons at state schools, six are living at Wrentham State School thus presenting a logical place to begin our review. The review consisted of interviews with treating psychologists, visits to meet the individual receiving Level III programming, and a review of records. Throughout this process state school administrators and clinicians have been most cooperative and helpful.

These reviews are not complete but it is encouraging to note that of the four women whom we have met, none are subject to the application of painful stimuli. One woman is subject to a combination of a restrictive "carry" and blindfold procedure that appeared to us to be a more extreme intervention than is warranted by the target behavior. We have asked the Central Advisory Committee to review this woman's program.

Although our review of class members at Wrentham State School was not complete as of this writing, there are some observations that may be stated:

- \* Psychologists have a good level of knowledge about the individuals they are working with, and were often present in the person's living and working environment;





- \* Behavior Modification program plans were comprehensive and had utilized data/results of previous behavioral treatment;
- \* The institution was in the process of reformulating their behavior modification program development, review and approval processes to conform with the 1987 regulations;
- \* The facility had failed to notify the commissioner when a new Level III procedure was to be implemented;
- \* The facility had not initiated proceedings to seek court approval for each individual's Level III program;
- \* The training provided to direct care staff on the 2nd and 3rd shifts was insufficient;
- \* Data collection was consistent but lacked detail;
- \* In one case there was insufficient direct care staff on the 2nd shift to implement the program - as a result the program had been suspended and then reinitiated at least one time;
- \* In one case, appropriate environmental supports had not been planned to assist one person in meeting her behavioral goal (A case where the program was based upon diminishing time intervals of time-out, but the person had no time piece or other way of noting the different time intervals); and
- \* With the exceptions noted above, all appropriate reviews and approvals had occurred prior to program implementation.

In summary, initial compliance with the regulations has been slow to occur but is underway at the state schools. We have been informed by DMR that outside of the two persons mentioned above, there are no community class members on Level III protocols but we are not confident that these regulations have been disseminated widely enough to have made community providers aware of their obligations. We would recommend that more intensive training be provided to service coordinators and the vendor community to ensure that the regulations are understood and implemented where necessary.

#### PERSONS IN NEED OF GUARDIANS

There are numerous class members in both community and state school settings who are not capable of making informed decisions and have no involved relatives or advocates to assist them. These people are very vulnerable because no one takes their part exclusively when major life changes are proposed.



In this report we discuss how persons with mental retardation are sometimes subject to powerful treatments such as psychotropic medication or aversive behavior modification methods, or are relocated from institutions, nursing homes, and community homes for a variety of reasons. When the critical decisions are being made regarding these actions, it is most important to ensure that the individual without the ability to make personal choices has a legal guardian who will represent his or her interests.

Some may argue that this role is adequately served by the ISP Team. However, no matter how well intentioned they are, these team members are service providers aligned with the agency providing services and are not in a position to exclusively represent the consumer's interest. For this reason we strongly recommend that efforts be undertaken to provide guardians for all class members who are determined to be in need of one, and who are not otherwise represented.

### C. EMPLOYMENT OPPORTUNITIES FOR CLASS MEMBERS

For people with mental retardation the opportunities for meaningful, gainful employment are few. In general, approximately 60% of people with disabilities throughout the United States are unemployed; 40% are under employed. In Massachusetts the employment options for people labelled mentally retarded include:

Competitive employment: independent employment in the regular marketplace;

Supported employment: working in the competitive employment area with supports from staff people. Supports vary according to the person's ability and experience; and

Sheltered workshops: working in large, segregated settings doing benchwork (piecework for a percentage based wage depending upon how fast one works).

Figures obtained from the Department of Mental Retardation reveal that there are approximately 3,500 people with mental retardation working in sheltered workshops and approximately 1,545 persons working in supported employment. The Office of Quality Assurance commends DMR's continued commitment to fund supported employment opportunities and the vendors' commitment to increase access to the real world. One human services vendor within the Commonwealth stated that the only reason they still ran a sheltered workshop was because they didn't have enough





staff to do on-site supervision nor enough employers who could employ everyone who was capable of working. While these are realistic obstacles to overcome they have nothing to do with the abilities and desires of people with mental retardation themselves. This is a problem with access to the marketplace.

Employment statistics also favor supported or competitive employment initiatives. Statistics compiled by the Training and Research Institute for Adults with Disabilities, and the Central Middlesex Association for Retarded Citizens indicates the following:

- \* In general, people's production rate doubles when they move from a sheltered workshop to a supported employment situation;
- \* The service industry is expanding while benchwork jobs are decreasing. By the year 2000, four out of five new jobs will be in the service area; and
- \* 88% of both top and line managers rated job performance by persons with disabilities as good or excellent.

Public testimony, given by class members at the Office of Quality Assurance Consumer Forums, revealed some disturbing conditions under which people worked in sheltered workshops.

- \* Many people said that the work was boring and repetitive.
- \* Several people complained that the work environment was difficult and unpleasant, stating such concerns as too many people working in one area, and high noise levels. Some also stated that they did not enjoy working near disruptive workers.
- \* While everyone expressed satisfaction with receiving a paycheck, most people said they wanted to make more money. Weekly pay ranged from \$1.00 to \$20.00.
- \* Many people complained that they had to do "make-work" when the sheltered workshop ran out of contract work; this resulted in payless pay days.
- \* Several people who lived at the state schools and worked at an on grounds sheltered workshop expressed a desire to work off grounds.
- \* Some people complained that their bosses (i.e. the staff and management of the sheltered workshop) do not listen to them. These people stated they aren't given explanations regarding



work practice (i.e. rules at the workshop or the practice of "make-work"); aren't given choices about work areas or contract jobs; and are not listened to when they want to make suggestions. They felt their opinions are not respected.

The Office of Quality Assurance also received testimony from people working either in competitive employment or supported employment. Their testimony painted a better picture of people's job satisfactions, but still raised some issues.

- \* Most people stated that they were very happy with their jobs.
- \* They earned more money now than when they worked in a sheltered workshop.
- \* The work itself was more rewarding and meaningful.
- \* They liked their coworkers and felt a part of the company.
- \* Some people did not receive regular pay increases or raises after several years of employment.

To ensure continued progress in this area, the Office of Quality Assurance recommends the eventual phase out of all sheltered workshops within the Commonwealth and the subsequent provision of supported employment opportunities for people who can work.

While the ultimate goal of formally organizing the consumer work force at these sites would be laudable, each sheltered workshop should at least establish a Worker Advisory Committee comprised of several workers with mental retardation. The committee would meet on a regular basis and give recommendations directly to the workshop management. The establishment of these committees could be accomplished through the Department of Mental Retardation's contracting and process regulations.

In addition this office recommends that:

- \* Workers be given career counseling and job tryouts to determine what jobs they like best to do, and what jobs match their abilities;
- \* Workers, at on grounds workshops, be given the option to work off grounds in a meaningful job; and
- \* Workers with mental retardation be given the same pay raises and cost of living adjustments as other workers within the company.





## D. RESIDENTIAL MOVEMENT OF CLASS MEMBERS

Since November of 1987 there have been 782 transfers of class members from one place of residence to another. Because this is the first time that such information has been collected, it is not possible to make comparisons with movement in other years or to find changes in reasons for movement. Nevertheless, we felt that these statistics should be shared to enable others to understand the types of changes experienced by people with mental retardation. The following charts depict the origins and destinations of people who have moved, and a summary of the reasons reported to this office for the moves.

### PATTERNS OF RESIDENTIAL MOVEMENT

	MOVED TO	MOVED FROM																	TOTAL
		RESIDENTIAL SCHOOL	ST. APT. COMM. RES.	CORRECTIONS FACILITY	STATE OP. ST. APT.	FAMILY HOME	ICF/MR	INDEPENDENT LIVING	MEDICAL FACILITY	MENTAL HEALTH FACILITY	NURSING/ REST HOME	REGIONAL CENTER	RESPIRE CARE	SPEC. HOME CARE	STATE SCHOOL	SHELTER	HOMELESS	ALCOHOL TREATMENT	
RESIDENTIAL SCHOOL		2		1											1				4
STAFF APT. / COMM. RES.		290	1	3	5			6	11	4	5		3	5	3				336
CORRECTIONS FACILITY		1	2					1											4
STATE OP. ST. APT.		2		3											1				6
FAMILY HOME		3			9	2			1					1	1				17
ICF/MR		7		2		3									5				17
INDEPEND. LIVING		6			1			28	1				1						37
MEDICAL FACILITY		3			1				1		6							1	12
MENTAL HEALTH FAC.		3												1	1				5
NURSING/ REST HOME				3		1		5		12				4					25
REGIONAL CENTER		3				1													4
RESPIRE CARE		7											1						8
SPEC. HOME CARE		4				1	2			2		2	2	21					32
STATE SCHOOL		92		59	2	94						6		2	16				271
SHELTER		1																	1
HOMELESS									1										1
ALCOHOL TREATMENT																		1	1
TOTAL		424	3	71	18	102	37	20	4	25	6	7	34	28	0	0	0	2	781



## REASONS FOR RESIDENTIAL MOVEMENT

REASONS	NUMBER	REASONS	NUMBER
Interim move/prepare for another program .....	3	Consumer decision .....	33
Make way for another candidate .....	1	Family purchases home for provider use .....	3
Family dissatisfied with care .....	1	Vendor changes program .....	17
Community integration (all from state schools in this category)....	245	Better peer group .....	9
House sold .....	19	Better housing .....	75
Mental health/behavioral.....	9	Return to state school/no day program at proposed residence .....	1
Diagnostic purposes .....	1	Better physical accessibility .....	6
Emergency/not described .....	1	New site permits more independence..	46
Provider neglect .....	1	In need of respite care .....	1
Nursing home closes .....	1	Move to Title XIX certified living area .....	9
Return from hospital or other recuperative setting .....	6	Afraid of elevators .....	1
Legal .....	3	Medical reasons .....	37
Specialized Home Care Provider cannot continue care .....	10	Family member cannot continue care..	3
Roommate problems .....	14	Family member/spouse dies .....	2
Family moves .....	2	Less rent .....	10
Landlord dispute .....	6	Apartment does not meet building codes .....	2
Renovation to home .....	3	Closer to resources or family .....	19
Evictions .....	6	No entry (early entries into the data base did not include reason).	114
Changes in vendor status .....	12		
ISP recommended/improved programing..	35		
Turned 22 .....	1		

It is very exciting to see the large number (249) of people who have been able to move from state schools to community programs during this period. Other positive notes include the number of people (33) making their own choice about where they want to live, and the significant number of class members (46) who moved into more independent living situations.

Notwithstanding the positive aspects of some of these moves, we are troubled by the volume of moves during this period. Leaving aside the 249 moves from state schools to community programs, there were 532 changes in residential location. We recommend that DMR study these patterns of movement in order to minimize residential dislocation of an undesirable sort.

Through the last several years, keeping track of the residential movement of class members has provided vital information about individual circumstances of each person at the time of a move. This information has served as an indicator of whether the class member needs additional assistance or is doing fine with existing supports. Tracking over a period of time, the patterns and reasons for movement can provide valuable information about the service system. For these reasons, such tracking should be an essential activity for any external quality assurance office.



# THE HISTORY OF THE

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OF THE CIVIL WARS

IN GREAT BRITAIN

FROM THE YEAR 1629 TO 1649

BY SAMUEL JOHNSON

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## E. STATE SCHOOL ISSUES

### STATUS OF PERSONNEL REASSIGNMENT

The Department of Mental Retardation is now in the last year of its three year plan to reassign approximately 1,200 state school positions to the community for the purpose of operating 57 state operated community programs. There are currently 39 fully operational programs of this type. This process has made a vast contribution to the state's array of residential services by providing DMR operated homes in communities around the entire state. As stated in our March, 1988 report, there are many positive aspects to these programs, including a dedicated staff and home-like environments.

Determinations regarding the availability of staff for reassignment are being governed by the Single Methodology (the court approved method for adjusting staff resources). The chart below identifies the number of positions from each state school that have been reassigned since April, 1987, when this process began.

### POSITIONS REASSIGNED FROM THE STATE SCHOOLS

STATE SCHOOL	REASSIGNED JUNE 1, 1989	AWAITING * REASSIGNMENT	TOTAL POSITIONS
BELCHERTOWN	208.5	35	243.5
DEVER	349.0	8	357.0
WRENTHAM	235.0	51	286.0
FERNALD	22.0	0	22.0
MONSON	33.0	6	39.0
TOTAL	847.5	100	947.5

- \* These positions are in the process of going through procedures so they can formally be reassigned. They are not currently available for use at the facilities.

In addition to the above positions the state continues to utilize 129 Excess of Quota (EQ) positions to augment the positions available for the operation of these programs. The EQ positions have been made temporarily available by the Legislature to assist with the reassignment process.

Summary of the year

The year 1900-1901 was a very successful one for the school. The number of pupils increased from 100 to 150. The teachers were very diligent in their work and the pupils were very obedient. The school was very well managed and the results were very satisfactory. The year was a very good one for the school and the pupils.

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Since the last report to the Governor, several critical issues have arisen with regard to reassignment and the extent to which the movement of these positions may be negatively affecting services at the schools.

#### Adequacy of Staffing at the Facilities

In August, 1988, DMR presented a plan to the parties which identified all of the additional positions they felt were going to be available for reassignment through completion of the process. While some of the projections were based directly upon application of the Single Methodology, others, particularly in the support staff functions (such as dietary and maintenance), were based upon anticipated improvements in productivity through changes in procedure or installation of new equipment. The plan included positions associated with both direct resident care (referred to as the Wrentham State School Client Informational Tool (WSSCIT) positions) as well as those dealing with non direct care functions (non-WSSCIT).

The Department of Mental Retardation maintained that the identification of positions was based solely upon the needs and characteristics of each of the state schools. The plaintiffs were very concerned, however, that the decision making process was influenced by the fact that superintendents were instructed to start from the assumption that a certain number of positions were needed to staff the remaining Housing Agenda programs, thereby predetermining the results of the process. At the same time, because of increasing staff vacancy rates at some of the schools and reports of higher absenteeism due to industrial accidents, the plaintiffs began to question whether the Single Methodology was indeed accurately determining the number of positions required to adequately staff the facilities.

In an effort to resolve these differences and to review DMR's plans, several meetings were held among representatives of all the parties. These meetings covered a multitude of topics related to state school personnel, but the major issues were:

- \* Concern that the number of non direct care positions proposed for reassignment were in excess of the number that could be made available without jeopardizing the quality of care at the state schools;





- \* Plaintiffs' concern that for direct care positions, the factor utilized in the WSSCIT portion of the Single Methodology to adjust staffing figures for absences, leaves, and days off, was insufficient to make up for the actual number of staff not in attendance;
- \* Plaintiffs' and OQA's concern that updating Single Methodology figures annually was not sufficient in that it did not take into account the changing needs and character of each school's population as frequently as necessary; and
- \* Plaintiff concern particularly at Wrentham, that too many support staff positions, such as dietary and housekeeping, were being taken from the facility.

In response to these concerns, DMR agreed to several changes in existing procedures. The Department of Mental Retardation has made modifications to the Service Readiness Assessment Form (SRA) requiring the superintendent to certify that positions being reassigned are not needed at the facility and that the criteria established as a condition of their release have, in fact, been met.

In addition, the Single Methodology figures are now updated on a quarterly basis rather than annually. The plaintiffs believe that monthly updates would be more accurate, but DMR considers that unnecessary and has therefore not agreed to a monthly schedule.

Finally, DMR agreed to provide the plaintiffs and OQA with a monthly staffing report by position category for each state school that identifies the number of positions "assigned", the number of staff actually "on duty", the number of staff required to be "on duty" according to the Single Methodology, and the reasons for the difference between the "assigned" and "on duty" figures. This report was requested by the plaintiffs in the hope that it would provide a basis for determining whether the staffing figures generated by the Single Methodology are in fact resulting in sufficient staff on duty to provide active treatment. After several months of negotiations, the parties were able to reach agreement on the format and contents of this report.

There is still substantial disagreement, however, regarding what the figures on this staffing report will actually mean, and the response DMR should take if the figures show fewer staff on duty than are called for by the methodology. The plaintiffs believe that if at any time the figures show any deficiency in "on duty" staff, that reassignment in that category should not occur until such time as there is a surplus. The Department of

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Mental Retardation, on the other hand, feels that there are likely to be major variations in these monthly "on duty" figures, and that pluses or minuses in any particular month will not be a true indicator of staff adequacy. They maintain that the Single Methodology figures should, on their own, continue to govern the reassignment process. The Department of Mental Retardation, however, is willing to consider a process of temporarily halting and reviewing the reassignment of any category of positions where deficiencies of a yet to be specified magnitude persist over some agreed upon period of time.

As of this writing DMR's first monthly report has been received. The plaintiffs and OQA are reviewing and analyzing these figures and discussing them with state school and DMR personnel. While it is clear that the report will be of value to the facilities in terms of managing their resources, it is too soon to tell, to what extent it will help inform the parties on the question of staffing adequacy.

#### Modifications to the Single Methodology

In May, 1988, DMR proposed several modifications to the WSSCIT portion of the Single Methodology - the part that determines staff requirements for those positions directly involved in consumer care. In their view, this modified process (called the WSSCIT II) would ensure that the methodology more accurately measures resident characteristics in order to determine staffing needs at each state school. At that time OQA and its Advisory Panel informed DMR that they would not be able to determine the acceptability of the WSSCIT II until the field testing and validation study results were completed and made available for review. To date, this has not taken place; therefore, neither this office nor the plaintiffs are yet able to comment on DMR's proposal.

A question has also arisen regarding how one determines the need for positions at those locations that have infirmary/hospital facilities. There is a recognition among all parties that at these locations there is a need to have specially trained staff permanently assigned to these medical facilities. This limits the flexible nature of infirmary staff and, therefore, requires some way of factoring in the need for some number of positions over and above those identified through the WSSCIT. While DMR has agreed to consider such an adjustment, they feel it should be done within the context of the changes being proposed under the WSSCIT II identified above.

In addition, DMR has proposed what it considers to be technical adjustments to the multipliers utilized in the WSSCIT formula to determine staffing levels for direct care positions.





The Department of Mental Retardation submitted these proposed changes to the Health Care Financing Administration (HCFA) for their review and approval.

As originally accepted by HCFA and the court, the WSSCIT formula for determining a sufficient number of direct care staff is as follows:

1. Individual needs are determined by assessing each person with the WSSCIT, yielding a total number of minutes of direct care staff interaction needed per day for all;
2. That figure is then converted into hours by dividing by 60;
3. To add direct care staff time spent in non direct care activities the above number is then increased by 30%;
4. To convert from minutes to days, that figure is then divided by the number of hours in one work shift (which under the original formula/method was 7.5); and
5. The Full Time Equivalency (FTE) factor is then applied to add staff time that is lost due to holidays, sick time, vacation leave, etc (this FTE factor was 1.74 in the original submission).

The two changes relate to the number of hours used for the work shift (item No. 4 above), and the FTE factor (item No. 5 above). They are as follows:

#### The Number of Hours Per Work Shift

In their original submission to court on the methodology, DMR used a 7.5 hour work shift for calculation purposes as described in item No.4 above. While the work day totals 8.5 hours, the rationale for using 7.5 was that staff get 1/2 hour off for lunch (this is unpaid time), and receive an additional 1/2 hour off for two fifteen minute coffee break times - thus the 7.5 hour work shift. The Department of Mental Retardation maintains, however, that this factor should change to 8 hours because the original method of determining staff time spent in non direct care activities incorporated the 1/2 hour coffee break time in the 30% multiplier (see item No.3 above) and is therefore being double counted. They feel that 8 hours rather than 7.5 hours is the correct work shift figure.

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### The Full Time Equivalency (FTE) Multiplier

The Department of Mental Retardation states that the original figure used to determine FTE requirements should have been 1.72 rather than the 1.74 included in the Single Methodology submission. They claim the inclusion of the 1.74 occurred simply as the result of a typographical error.

Both of these modifications are disputed by the plaintiffs on several grounds. First and foremost, they maintain that since the Single Methodology was approved by court, no changes may be made without court approval. In addition, with regard to changes in the number of work hours per shift, they maintain that no proof or substantiation of DMR's claims have been provided. Finally, they continue to maintain that the 1.74 multiplier is too low to ensure adequate staffing, and have actually filed a motion in court to seek clarification on this and other matters.

In OQA's opinion, consideration of these proposed adjustments, in isolation from the other modifications proposed in the WSSCIT II, does not make sense. As submitted to court, the WSSCIT portion of the Single Methodology is viewed as a comprehensive process for analyzing staffing needs, not a series of individual steps that can be adjusted individually without reference to the other steps. While either of the adjustments, by themselves, may or may not have merit, to make changes to any part of that approved methodology without looking at it within the context of the overall revisions being proposed, could well damage the integrity of the WSSCIT and the entire methodology. Therefore, OQA recommends that these proposals be viewed and considered in conjunction with the changes being proposed under the WSSCIT II, and that the process that DMR is utilizing to evaluate the WSSCIT II modifications be extended to include these proposed adjustments as well.

### Quality of Care in Relation to Number of Staff

Ultimately the question that must be raised when one confronts the issues identified above is "What type of care is being provided at the facilities?" No particular number of staff or positions can guarantee adequate service delivery. For example, while one facility may have twice as many staff as another to serve an equal number of persons with similar needs, it could very well be the facility with fewer staff that provides better services. Such a difference may be attributed to a variety of factors beyond staffing ratios such as leadership, commitment, level of training and expertise of staff, staff morale, scheduling, etc.





It is important to realize that the Single Methodology is just a tool to help determine the overall staffing needs. It is neither an exact science, nor is it the only predictor of quality of care. While it would be much easier to view compliance solely in terms of adherence to numbers generated by a computer, it would be a grave mistake. As many times as this office has viewed one direct care staff person doing an excellent job serving a group of class members, it has also seen three or four staff members sitting in a room doing nothing at all.

This office is increasingly concerned that through this prolonged debate over how many staff are needed at the various facilities, the parties may be losing sight of the ultimate goal of ensuring the provision of active treatment for class members. While the availability of adequate staffing is clearly important, it should be viewed only as a means to an end. The Office of Quality Assurance, therefore, recommends that DMR and the plaintiffs first seek to reach some common understanding of the indicators for quality of care. From that, a better determination can then be made as to whether staffing at the various facilities is adequate and whether any particular methodology is accurately measuring those needs.

#### CONDITIONS AT FERNALD STATE SCHOOL

In the Office of Quality Assurance's March, 1988 report, serious concerns were raised regarding the adequacy of staffing and certain quality of care issues at Fernald State School (FSS). Despite some efforts by DMR to reduce the staffing deficiencies and vacancy rates, problems still persist and additional issues regarding the adequacy of resident care and staff supervision came to the forefront during this past year.

In November, 1988, a resident of Fernald died during the early morning hours as a result of being wedged between the mattress she was sleeping on and the bed rail that guarded her bed. In violation of existing agreements, the Office of Quality Assurance was not made aware of this death until almost a month later when we made inquiries as a result of incidental information we had acquired. This office is supposed to receive notification of a class member's death within 24 hours of such an occurrence. Upon DMR's thorough investigation of this death, it was determined that the direct care staff person responsible for this resident's supervision had not performed a bed check in accordance with standard policy. It was also found that a nurse had not followed appropriate procedures regarding discovery of inattentive staff. It was later discovered that the direct care

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worker had on a previous occasion been found sleeping on the job, but she went out on industrial accident leave just prior to her hearing and was allowed to come back to work before that hearing was rescheduled.

The incident raised the following concerns:

- \* The problems associated with the type of mattress and bedrail being used;
- \* The problems associated with taking speedy and appropriate disciplinary action against employees;
- \* Questions relative to the timely reporting of deaths to all appropriate parties;
- \* Problems associated with staff performance and supervision on the third shift;
- \* The need to strengthen policies and procedures to prevent sleeping on the job; and
- \* Problems associated with the grouping of elderly people separately in a large building away from the mainstream.

This tragic death, combined with other concerns regarding staffing, supervision, increased admissions of persons with high staffing needs, and other quality of care issues caused OQA to pursue a more intensive review of conditions at Fernald. In an effort to improve the situation at Fernald, DMR initiated several actions in February, 1989, including: making physical changes to the bedrails; freezing admissions for 60 days; increasing recruitment and staff development activities; hiring a full time English as a Second Language (ESL) instructor; hiring an additional investigator; establishing a formal bed check policy; restructuring the second and third shift supervision; and establishing an Active Treatment Implementation Committee to rearrange Fernald's service delivery model. In addition, DMR is in the process of trying to strengthen some of its policies and procedures relative to staff inattentiveness and progressive discipline. Commissioner Mary McCarthy has also recently agreed to establish a task force to review and make recommendations regarding the current practice of serving residents in groupings according to age and diagnosis.

In April, 1989, OQA staff made an early morning (4:00 a.m.) unannounced visit to Fernald. The purpose of the visit was to observe conditions in the very early morning, and to determine the extent to which the new bed check policy (a procedure for



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checking residents during the night) and other supervisory changes that had been made in response to the November, 1988 death, were being implemented. Observations indicated that in certain locations on campus, serious problems persisted with unacceptable breaches in bed check routines, direct care performance, on duty (O.D.) supervisory practices, and inadequate supervisory staff on the third shift.

In response to these findings, and in an effort to improve supervision on the third shift, Fernald has or is in the process of taking several steps, including:

Taking disciplinary action against some of the staff observed as not adequately performing their duty (some staff have not been disciplined);

Establishing new protocols for 11:00 p.m. to 7:00 a.m. shift supervision relative to review of bed check data sheets;

Making quarterly unannounced sweeps of all buildings between 2:00-4:30 a.m. by managers, and ongoing random visits by the Superintendent and Deputy Superintendent; and

Attempting through shifting of resources and seeking additional positions, to add three supervisory positions to the 11:00 p.m to 7:00 a.m. shift.

The Office of Quality Assurance will continue to closely monitor this issue to determine the extent to which these actions have improved the supervision on the third shift.

In April, 1989, the Department of Public Health (DPH) completed its annual survey at Fernald and found serious problems with the provision of active treatment. Indeed, its April 18, 1989 notice to the superintendent stated that Fernald had "...deficiencies of such a character as to seriously limit the capacity of the facility to furnish adequate care or services..." Particularly problematic were the failure to provide active treatment during the evening and early morning hours, inadequate training of direct care staff, and inadequate monitoring of programs. Much of what DPH found has reinforced the need for Fernald to more aggressively pursue the active treatment and staff training initiatives they began in February, 1989. A recent DPH follow-up visit found conditions had improved to the extent that Fernald was no longer in jeopardy of losing certification during this survey period. Nevertheless, implementation of their plan of correction will be closely monitored by this office to ensure that continued improvement in deficient areas occur.



The Office of Quality Assurance's last report raised several concerns regarding DMR's plans for reducing the known staffing deficiencies at Fernald. In particular, concern was expressed about the proposed timelines and the assumptions made in DMR's plan regarding the changing needs and census of the school's population. At that time, according to the results of the Single Methodology, Fernald had a shortage of 153 direct care staff and 47 nurses. When one factored in the excess positions in other categories, a total deficiency of 178 positions remained. The latest figures available to OQA as of March, 1989, indicate that there has been some reduction in that deficiency. As of that date, the direct care deficiency was 91, nursing was 46, and the overall deficiency was 134. While the results indicate that some progress has been made in reducing the deficiency, it has been even slower than the earlier projections that were unacceptable to this office.

The problems and concerns identified above focus on many different areas. It is important to note, however, that some of these problems are associated with certain characteristics that are unique to Fernald. Fernald's size and urban location makes the recruitment and retention of a stable and adequately trained work force very difficult in the current economy. Size is also an obstacle to the development of accountable management systems and personalized care giving. In addition, some state rules and regulations with regard to employee discipline also inhibit the facility's ability to take swift and appropriate action against employees not adequately performing their duties. Finally, there is increasing pressure, because of the shortage of appropriate community resources, to admit persons who have very high staffing needs. Over the past six months the superintendent has taken several initiatives to try and correct the problems identified by OQA and DPH. It is critical, however, that DMR provide the facility with the resources, including additional staff, it needs to implement these initiatives, and that there is success in making the necessary changes to state rules and regulations that restrict the facility's ability to adequately discipline employees. Consideration should also be given to undertaking a thorough review of Fernald's management system with the ultimate goal of making changes that strengthen the communication of expectations and procedures for accountability to all staff at all levels.





## STATE SCHOOL ADMISSIONS

The abhorrent conditions of state schools that prompted the legal action of families in the mid 1970's were, in large part, due to extreme overcrowding of ward-type living areas compounded by the condition of insufficient staff and expertise to meet the peoples' needs. Thus a major thrust of consent decree agreements was to improve physical living quarters and other standards of care, eliminate over crowding by developing non-institutional living alternatives, and enrich the staffing levels to a point where active treatment would occur.

To accomplish these goals it was necessary to specify a maximum number of persons that could reside at each school and to limit admissions accordingly. Also, it was necessary to institute standards of care in the schools that must be upheld when delivering services. One of the most significant outcomes of these objectives was to establish a diverse network of community living arrangements where former state school residents could live and work with varying degrees of support in neighborhoods throughout the state.

To preserve the hard won improvements in mental retardation services at the state schools, the court's order and memorandum of October 9, 1986, stipulated that the defendants must develop standards and a formal policy to control admissions and readmissions to state schools. This policy was completed on December 8, 1987.

In our March, 1988 report we indicated that the Department of Mental Retardation admitted approximately 84 persons to state schools over a two year period. Information on admissions had been sporadically provided to this office so that our data was limited to a partial sample of admissions that occurred over a four year period. Our analysis of the four year sample showed that 26% were admitted from community programs that could no longer meet their emotional/behavioral needs, and 15% were attributable to temporary or long term illness. We urged that DMR strengthen mental health and health related supports in the community in order to reduce admissions.

From 1/26/88 to 5/16/89, DMR reported that 45 people were admitted to state schools. Due to new reporting systems this office has established with DMR, it is felt that these represent the total number of admissions during that period. Of these, 32 were new admissions, and 13 were readmissions. In raw numbers, this rate of admissions is similar to previous years - approximately 40 per year. The following chart provides a breakdown of the places people lived prior to admission and the state school they were admitted to.



ADMISSIONS TO STATE SCHOOLS FROM 1/26/88 to 5/16/89\*

ADMITTED TO:

ADMITTED FROM:	DEVER STATE SCHOOL	FERNALD STATE SCHOOL	MONSON DEVELOPMENTAL CENTER	WENDEHAM STATE SCHOOL	TOTAL	
	766 RESIDENTIAL SCHOOL	0	2	1	0	3
	HOSPITAL	0	2	1	0	3
	ICF/MR	2	0	0	5	7
	STAFFED APARTMENT/ COMMUNITY RESIDENCE	0	1	1	2	4
	FAMILY HOME	0	2	0	0	2
	STATE SCHOOL	0	6	0	1	7
	MENTAL HEALTH CENTER	0	2	0	0	2
	STATE HOSPITAL	0	14	1	0	15
	QUARTERWAY HOUSE	0	1	0	0	1
	RESPIRE CARE	0	1	0	0	1
	TOTAL:	2	31	4	8	45

\*THERE WERE NO ADMISSIONS TO BELCHERTOWN STATE SCHOOL DURING THIS PERIOD.

These numbers reflect the continuing efforts of DMR to move persons with mental retardation who are inappropriately placed at mental health facilities into alternative living arrangements such as state schools. While we commend the acquisition of more appropriate services for this group, we remain concerned that some people who have been admitted were not able to be appropriately managed in the school environment, and their admissions have stressed resources to the breaking point while affecting the quality of life for other consumers. In fact, at Fernald State School, DMR voluntarily closed admissions at one point to permit the facility to recover from the strain of previous admissions. We commend the commissioner for taking this action when it became clear that a respite from admissions was necessary.





The seven admissions from one state school to another represents DMR's effort to find living situations that meet federal quality standards for those persons at Dever State School who remain in sub-standard living conditions because the development of community housing has fallen behind schedule. Under pressure to find adequate housing, DMR proposed to transfer people from Dever State School (DSS) to other state schools with available quality living quarters. The Office of Quality Assurance opposed this solution on the basis that more might be done to find adequate community placements, and that the advantages of moving to housing that meets federal standards might be outweighed by the inevitable disruption of relationships and continuity of services for persons who have been lifelong residents at Dever.

It was subsequently agreed upon that this strategy would be permitted in cases where the resident was capable of making a personal choice, or where actively involved families or guardians were in agreement - provided that they had been presented with appropriate choices, including:

1. Opting for their relative or ward to remain at DSS until a Housing Agenda placement becomes available;
2. Opting for their relative or ward to transfer to a Title XIX approved living area in another state school (parents and guardians would be given opportunities to visit the proposed site before deciding); and
3. Having a Housing Agenda placement reserved subsequent to transfer to another state school.

The Office of Quality Assurance has monitored this process carefully. At this time it is necessary to review the agreement with DMR due to some recent deviations from it, and to seek alternative solutions to the housing crunch that would eliminate the necessity of interim transfers. Numerous meetings with involved agencies have failed to produce an adequate solution to this problem.

The high number of admissions from community based ICF's/MR should be looked at quite carefully. An Intermediate Care Facility for the Mentally Retarded (ICF/MR) is the most intensive care environment available, and it is not immediately apparent why a state school ICF/MR would improve upon the delivery of care available at community based facilities of the same type (the state schools are certified as ICF's/MR).

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Within an ICF/MR it is theoretically possible to reconfigure resources in accordance with changing needs of the residents and to be retroactively reimbursed if the changes cost more than the approved service rates. For example, if more nursing services were necessary because a resident was ill, the necessary hours could be added and the operator would be reimbursed for the expense if justified. Because it is a retroactive adjustment it is possible that it would be denied and even if honored, the operator bears the burden of cost until approval is granted. This regulatory structure may be contributing to inflexibility in meeting the needs of the residents, and solutions must be sought if that is the case.

A closer look at the seven admissions from ICF's/MR shows that six people were involved (one person was admitted twice) and five of the six were admitted from state operated ICF's/MR. There are a number of factors that may be hypothesized as contributing to this phenomena: 1) It is easier to move the person than to reconfigure services and file an adjustment; 2) The access to state schools is easier for state operated programs than for non state vendors; 3) The persons living in state operated programs have more problems than others; 4) State operated facilities can tolerate loss of revenue that occurs when residents leave the ICF/MR better than non state operators and are therefore more likely to seek treatment in other settings. These admissions must be studied carefully to determine why they occur and, in the interest of a stable home environment, efforts must be made to limit admissions and seek treatment solutions within the community ICF/MR whenever possible.

Of the 45 people admitted to state schools, 12 were admitted on an emergency basis and 33 were longer term admissions. It was reported in the admission notification that in nine cases (22%) the individual could have been adequately served in the proper community setting, but either the appropriate service or funding was not available. As we urged last year, it is incumbent upon DMR to strengthen the community services so that institutions are not used in default when resource gaps exist in the community system.

The Admissions Policy requires that upon an admission, a plan for the individual's movement to a less restrictive setting must be in place. Of the 33 longer term admissions, only 13 had such plans. This is an unacceptable deviation from the policy.

In one case of an emergency admission it was documented that there were insufficient resources to meet the person's needs at the state school, yet the admission was approved by the superintendent. This is an unacceptable situation.





The foundation of assessing and meeting a person's needs is the Individual Service Plan (ISP) team. It is disturbing to us that of the number persons admitted on a long term basis (33), three people had no ISP's at all (in six additional cases information is not available as they were reported prior to the implementation of revised reporting practices). Of 12 emergency admissions, one person had no ISP and in two other cases, ISP status was omitted from the reporting form. Of the 25 persons admitted on a non emergency basis with ISP's, in 12 cases it was documented that the ISP had no recommendation for the state school placement. This represents a serious failure of the ISP process at a time when due process and careful planning is most critical. These cases must be analyzed to understand why the service plan was not modified.

The admissions policy requires that when an individual is admitted on a long-term basis, that another candidate from the state school should be sought to fill the community vacancy. Such replacements have not been consistently done.

Given our concerns and the deviations from policy that have taken place, we firmly believe a complete review of the Admissions/Readmissions policy and its implementation is needed at this time. This is in accordance with the memorandum accompanying the policy which states:

"The policy will be reviewed within two years to determine whether it should be revised, amended, or repealed based upon experience with its implementation."

Such a review is essential at this time and should include input from all concerned parties, including advocates.

As we pointed out earlier, the number of persons permitted to inhabit the school is inextricably linked to the quality of services there. For this reason it is appropriate to take a long view of some potential trends in admissions based upon our knowledge of the current system, and project the impact of such trends on the schools.

The rate of placement out of the state schools is winding down as the community Housing Agenda nears completion, thus DMR cannot sustain the current rate of admissions (approximately 40 people per year) without increasing the number of institutional beds. Increasing beds would be an unacceptable strategy for several reasons.



- \* Quality of care is directly related to the size of a facility.

Depersonalization of care-giving, diffusion of fixed point of responsibility, and numerous other factors that affect care are problems related to the scale of a facility. Fernald State School is a good example of this. As the largest state school (fully 1/3 larger than the next largest state school), the facility has teetered on the brink of decertification several times in the past four years for active treatment problems. In the past year this office has addressed serious problems with life/safety systems and procedures, attentiveness to duty and supervision on the third shift, and difficulty in getting investigations or other critical information in a timely manner. (See section above for a detailed discussion of Fernald issues). While a direct correlation of these problems to facility size cannot be made, it is our sense that very large facilities are inherently difficult to manage well and inevitably the quality of life deteriorates as a result. Economics realized by scale are empty gains when the overall mission of caring for the people who live there suffers.

- \* The current trend in professional practice and philosophy is toward supporting people with disabilities in their own communities.

The wisdom of this thinking was confirmed to us in our state-wide visits to class members. Class members we spoke with who were living in community situations expressed far more satisfaction with their lives than their state school counterparts; they had become involved in their communities in diverse and fascinating jobs, friendships, activities, and held their ability to make choices as sacred. To choose to expand institutions simply makes it more difficult to build the competence of communities to support the participation of people with disabilities.

- \* The current admissions' trend toward institutionalizing persons with behavioral problems and those with physical disabilities will create untherapeutic living environments.

These groups require intense, small scale living environments where responsibility is fixed, communication is excellent among care-givers, and programs are individualized to a degree that is difficult to accomplish in a large scale environment.





## THE CLOSING OF BELCHERTOWN STATE SCHOOL

In Outside Section 70 of Chapter 164 of the Acts of 1988, the Massachusetts Legislature directed the Department of Mental Retardation to "conduct a study of the feasibility of consolidating the administration, operation, and facilities of the Wrentham, Dever, Monson, and Belchertown state schools." Commissioner Mary McCarthy conducted a study and concluded that Belchertown State School would close by the year 1992. The people living at the school, or their guardians, would make a decision to either move into a community program with appropriate staff or into another institutional placement at another mental retardation facility. (For further details refer to DMR's "A Study of the Feasibility of Consolidating Certain Mental Retardation Facilities in the Commonwealth", March 1, 1989.)

The Office of Quality Assurance strongly supports the decision of Governor Michael Dukakis, Secretary Philip Johnston, and Commissioner Mary McCarthy to close Belchertown State School. This is based upon DMR's research regarding the future costs involved in maintaining Belchertown, and their findings that the vast majority of residents are either interested in community placement or have not expressed an objection to it. In addition, it is consistent with our belief, and that of the court, that community living arrangements are to be provided to all class members living at all the state schools, when they or their guardians desire one. This plan is strongly endorsed by the Belchertown plaintiff representatives' Advocacy Network Incorporated, (formally the Belchertown State School Friends Association Inc.) who have worked closely with DMR in its development.

There are several reasons why we consider a properly planned closing of Belchertown to be in the best interests of class members:

- \* The community system in Region I is strong. Most vendors appear stable, the community is welcoming of people with disabilities, the advocacy groups are well respected and committed, and the DMR Regional and Local Service Centers are capable and creative in their approach to peoples' needs.
- \* Research has shown greater gains in developmental skills of people living in community programs as compared to their matched counterparts remaining at state schools. A recent study conducted in Region I found that "the community group...[as compared to their matched counterparts still living at Belchertown State School] showed significantly greater gains in terms of cognitive/social skills. Specific



gains were made in reading/writing, quantitative, independent living, community orientation, recreational, vocational, and social interaction skills" (Elizabeth A. Eastwood, Ph.D., "Community Living Study: Three Reports of Client Development, Family Impact, and Cost of Services among Community-Based and Institutionalized Persons with Mental Retardation", 1985, p.2). Similar findings were also found for persons with mental retardation who were placed in the community from Pennhurst State Hospital in Pennsylvania. (For further details read "Longitudinal Study of the Court-Ordered Deinstitutionalization of Pennhurst Residents, Dec. 1983").

- \* The public testimony gathered at the Office of Quality Assurance's Consumer Forums around the state, suggested that many people who live in the community seem happier, feel more empowered, and have more options and goals for their future than many of their counterparts who live in the institutions. Despite some peoples' initial anxieties about moving to the community these persons said they now enjoy their new lifestyle and state that they would not return to the state school under any terms.

The process of closing Belchertown State School, however, must be effectively planned and monitored. It is essential that, prior to the placement of class members, a detailed housing agenda plan is developed. This plan should identify the specific type and location of programs to be developed, and the resources needed and secured for both the site and services. Options created through this plan should enable people to move from Belchertown to the home of their choice. Superintendent Joan Pine has started this process by speaking with every resident. She has done an excellent job in attempting to reassure people that they will have choices about their new homes and has been available to answer any questions they might have about the closing. The comments, questions, and suggestions made by Belchertown residents at our forum should be helpful in the formulation of the Housing Agenda as well.

In order for class members to make a truly informed decision, they need to visit community homes and work locations. People should be given the opportunity to speak with class members who have already moved from Belchertown. The people who have already made this transition have a wealth of knowledge and have expressed a desire to help others. One former Belchertown resident stated during the Region I consumer forum that, "I want to get all the people out of Belchertown and teach them to be capable".





During the Belchertown forum three class members stated that they did not want to move from the state school. They also stated that they did not want to move to another institution. Creative alternatives must be offered to class members and guardians who feel this way, and every effort must be made to reduce peoples' concerns.

The consolidation study discusses the financial benefits of closing Belchertown stating "providing services to Belchertown residents in community programs is less costly than institutional services".(see p.ii) This potential benefit should be monitored carefully to ensure that it is not realized at the expense of solid community placements and to determine if savings could be realized elsewhere.

Finally, the Office of Quality Assurance also supports the reports' recommendation that "all facilities be reassessed for possible consolidation or phase down within two years". (see p.30) This should be an ongoing process for all consent decree facilities as physical conditions at the facilities change and as class members and guardians' wishes are determined.

1. The first part of the report deals with the general situation of the country and the progress of the work during the year. It is divided into two main sections: the first section deals with the general situation of the country and the progress of the work during the year, and the second section deals with the specific results of the work.

2. The second part of the report deals with the specific results of the work. It is divided into three main sections: the first section deals with the results of the work in the field of agriculture, the second section deals with the results of the work in the field of industry, and the third section deals with the results of the work in the field of commerce.

3. The third part of the report deals with the conclusions of the work. It is divided into two main sections: the first section deals with the conclusions of the work in the field of agriculture, and the second section deals with the conclusions of the work in the field of industry and commerce.

### III. SELF ADVOCACY AND THE CONSUMER FORUMS

The consent decree process has involved many people: parents of class members, attorneys, staff from the Department of Mental Retardation, Mental Health officials, the Court Monitor and staff (now the Office of Quality Assurance for the Mental Retardation Consent Decrees), and concerned citizens. For 15 years the state has been struggling to develop programs and services, and provide better living environments for people labelled mentally retarded. During these years the people who have been affected most by these class actions have been the least involved in the decision making process - the class members themselves.

The Office of Quality Assurance wanted to include class members in this process so that their voices would be heard as equal to those of the other participants and be given the same degree of respect. Therefore, a series of meetings was held across the Commonwealth with approximately 325 class members in attendance (245 from the state schools and 80 from the community). We heard testimony on their thoughts about their lives, the services they receive, the opportunities and experiences they have had, and their dreams and future goals. While this is not the entire class, it represents a large group of class members from many diverse locations and should therefore be taken seriously as valid feedback. These meetings also served to support the self advocacy movement both in the state schools and in the community. We often collaborated with existing self advocacy groups in order to coordinate these meetings. We also had the assistance of staff from all the state schools and regional offices of DMR.

Self advocacy is a simple term used to describe a complex and courageous movement. Basically, self advocacy is a civil rights movement organized by and for people labelled mentally retarded. It has grown out of peoples' struggles for a better, more meaningful, integrated, and independent lifestyle. Traditionally, the self advocacy movement has been open to every person with mental retardation regardless of where they live, how skilled a person is, or how well they are able to communicate. The self advocacy movement has been supported by non-disabled people who believe in the inherent dignity and right to self-determination of people labelled mentally retarded.

Self advocacy begins on an individual level for the person labelled mentally retarded. One learns self-worth from the movement. People are standing up and announcing to the world that they are people with ideas, feelings, and rights that cannot only be understood by the label that society has placed upon them. This is a simple statement of human dignity and one which





the Office of Quality Assurance fully endorses. A major objective of the Consumer Forums and the self advocacy movement is to empower people with mental retardation by listening to their points of view and incorporating them into the quality assurance process.

The Office of Quality Assurance held fourteen meetings across the Commonwealth. We held a meeting at each state school and regional center and in each DMR regional office. These meetings were open to all class members. The results of the Consumer Forums were enlightening and some major themes emerged. We have delineated them below into testimony from two groups, state school and community class members. In general, people we spoke with who lived in the community expressed greater satisfaction with their lives, experiences, and services than those who gave testimony from the state schools.

#### STATE SCHOOL TESTIMONY

The following represents a synthesis of observations, analyses, or statements made by the people who live in the state schools. It should be noted that services, freedoms, and resources varied by school but in general, what is described below holds true for all state schools.

- \* Many of the consumers we spoke with stated that they wanted to move to a community setting. Smaller numbers stated that they liked living where they were or could not move due to family objections. Others said nothing at all.
- \* Many people said that the staff were helpful and taught them skills.
- \* Many people said that they had voted this year. However, voting was often done by absentee ballot and not in regular town voting places.
- \* Many people talked about the physical changes that had occurred as a result of the consent decrees. People liked having their own rooms and the ability to have places to put their own possessions.
- \* Many people stated that they liked the day programs they were in.
- \* The Special Olympics program was extremely popular.



- \* Activities that were provided on grounds were always popular; these included dances, bingo, using the library, movies, and arts and crafts. The canteens are used frequently but people complained about their limited hours. They want the canteens open more often - after 5:00 p.m. and on weekends.
- \* People talked about the vacations they had taken; Florida and Disney World were popular as well as Cape Cod. Some people stated that they were no longer able to go on vacation out of state because staff were not allowed to go.
- \* Many people who are physically disabled and using wheelchairs stated they had little opportunity to go on trips into the community, to work in settings other than on grounds sheltered workshops, or to go to recreational activities on grounds. At one state school, a young man stated that he "couldn't wait for spring" so that he could go out of doors and visit with friends he hadn't seen all winter.
- \* Many people complained about the lack of freedom they experienced; always being told what to do, sometimes without explanations; and not being given any choices. For example, some people complained that when people were moved from one building to another they were not consulted nor were any explanations given to them. In one case a woman said she was forced to be bathed by staff even though she was capable of bathing herself. She had requested that she be allowed to bathe herself but this request was denied. In other cases people complained that they did not like the fact that people of the opposite sex helped them with bathing.
- \* Some people complained that they experienced situations where staff didn't treat them with respect. Some staff called them names, physically mistreated them, and used foul language in their presence. In one case a physically disabled woman told us she had cried the night before because the staff person on duty would not take her to the bathroom.
- \* There were several complaints that food was served cold and was unappetizing. People also stated that they wanted more choices in the foods that were served.
- \* Some consumers stated that they would like to get cable television installed on the grounds of the schools.



THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

PHYSICS 341

LECTURE 1

THEORY OF QUANTUM MECHANICS

LECTURE 2

THEORY OF QUANTUM MECHANICS

LECTURE 3

THEORY OF QUANTUM MECHANICS

LECTURE 4

THEORY OF QUANTUM MECHANICS

LECTURE 5

THEORY OF QUANTUM MECHANICS

LECTURE 6

THEORY OF QUANTUM MECHANICS

- \* Many consumers wanted more opportunities to go off grounds and into the community for recreational activities. Lack of staff and lack of van transportation were reasons given for why people didn't go out. Some people exhibited great patience with "the system" as shown by one young man who told us that it was necessary to take turns so that others would have a chance. This meant that community trips would be as infrequent as once per month or once every two weeks.
- \* Many consumers asked us when there would be another meeting with the Office of Quality Assurance. People stated that they really enjoyed the opportunity to tell us how they felt about their lives and what changes they wanted to happen.

#### COMMUNITY TESTIMONY

The following represents a synthesis of observations, analyses, or statements made by the people who live out in the community.

- \* The vast majority of people expressed satisfaction with their community living situations.
- \* People who talked about their past lives at the state school said their lives were better now than when they lived at the schools; no one wanted to return to the schools.
- \* Several people talked about enjoying the freedoms they experienced in the community. One person said, "I'm a free man. I know what I want".
- \* Many people testified that they liked their independence, the fact that they had choices, and were very proud of the accomplishments that they had made. They stated that moving from the state school into the community gave them a sense of pride. One man said about the schools, " Those places are no fun, no enjoyment. People don't feel good about themselves in those places...Takes awhile after you get out. After two years you feel a lot better".
- \* Many people voted this past year. These consumers voted in regular polling places in the community.
- \* Many people said that staff were helpful. Staff helped them learn to cook, pay their bills, work on a budget, and go out to recreational activities.



- \* Many people discussed their travels. People had gone to Canada, Italy (to have an audience with the Pope), California, Florida and Disney World, Cape Cod, and Maine.
- \* People said that there weren't always enough staff available to help them. They are sometimes told that staff are "too busy with paperwork".
- \* Most people complained about the lack of transportation available to them. They referred to both public transportation and special transportation.
- \* A few people stated that they didn't like where they were living because the physical conditions of their homes was not good.
- \* Some people complained that the staff "bossed them around".
- \* Some people stated that they didn't want to discuss their past lives at the state schools. They said it was either too painful or they didn't want people to know that they used to live there because then "they treat you different".
- \* Most people wanted to have another opportunity to speak with the Office of Quality Assurance and asked when the next meeting would be held.

The recommendations listed below are in response to the suggestions and concerns raised at the Consumer Forums related to service delivery:

- \* Community-based residential programs must be made available to all class members who desire one. The Department of Mental Retardation should develop a housing agenda plan for these class members to accomplish this goal. It must include a mechanism for determining peoples' preferences after they have had positive community experiences. In order for people to make an informed choice, consumers need to visit community homes, talk with people who have moved out of the state schools, and then come to their own decision. For those not capable of making informed choices, guardians should be appointed to assist with this decision;
- \* The integration of people who use wheelchairs into the mainstream of life must be aggressively sought at the state schools. It was quite apparent that people who are physically disabled were denied a level of service available to non-physically disabled citizens within the state school community;





### BELCHERTOWN STATE SCHOOL

E & F Building shall be closed. The defendants' current planning will lead to closing by July, 1987.

The infirmary shall be closed. The defendants' current planning will lead to closing by July, 1987.

If the infirmary's closing is substantially delayed, CQA is to review and recommend whether incandescent lighting is needed.

The superintendent shall submit a plan within 90 days with a view towards improving the quality of life of persons residing in G Building and the Cottages.

COMPLETE - F Building closed in November, 1987.  
E Building closed in April, 1989.

INCOMPLETE - The infirmary currently has 11 persons in residence. It is now scheduled to close in July, 1989.

COMPLETE - Determined to be unnecessary.

COMPLETE - Superintendent's plan submitted in March, 1987, called for improvements to G Building dining room, day rooms, bedrooms; modifications to two cottages and expansion and renovation of the canteen. Funding identified in FY89 Capital Budget. Project on hold because of state plan to close Belchertown. (See discussion below.)

### MONSON DEVELOPMENTAL CENTER

The Longview Building recreational area shall be developed in accordance with resident needs.

The defendants shall provide additional adequately designed program space to meet the needs of Monson class members.

COMPLETE - Summer, 1988.

INCOMPLETE - Baypath residential building converted to program space in 1987. Facility continues to make progress increasing the out of building program/employment opportunities for residents - more opportunities still needed. (See discussion below.)

### FERNALD STATE SCHOOL

Greene Building shall be completed, but shall not be occupied until HVAC problems are corrected.

Schoolhouse Program Building, Manual/Training, and Thom Hospital shall be completed.

Woodside and Brookside shall be converted to program space.

The Valley Barn project at Templeton shall be completed and facilities shall be made fully ready for use as expeditiously as possible.

ONGOING - Greene Building finally occupied in March, 1989. Concerns still exist, however, regarding adequacy of HVAC system. Additional work still ongoing. (See discussion below.)

INCOMPLETE - Schoolhouse completed in December, 1986. Manual/Training completed in March, 1987. Thom fell far behind schedule due to certain deficient conditions and is not yet fully occupied. (See discussion below.)

INCOMPLETE - Design work complete. Project first delayed because of delays at Greene. More recently delayed by temporary hold in the release of funding. Construction now scheduled to start in July, 1989, with completion in September, 1989. (See discussion below.)

COMPLETE - A few longstanding unresolved items still require resolution. DCPO now in the process of working with contractor.

## Appendix

The following table shows the results of the experiments conducted on the effect of temperature on the rate of reaction between hydrogen peroxide and potassium iodide. The reaction is catalyzed by the presence of a small amount of manganese(IV) oxide.	The following table shows the results of the experiments conducted on the effect of temperature on the rate of reaction between hydrogen peroxide and potassium iodide. The reaction is catalyzed by the presence of a small amount of manganese(IV) oxide.
The rate of reaction was measured by the volume of oxygen gas evolved over a period of 10 minutes. The temperature was varied from 10°C to 50°C in increments of 10°C. The results are shown in the table below.	The rate of reaction was measured by the volume of oxygen gas evolved over a period of 10 minutes. The temperature was varied from 10°C to 50°C in increments of 10°C. The results are shown in the table below.
The rate of reaction increased with increasing temperature. The rate was approximately 1.5 times greater at 20°C than at 10°C, and approximately 3.5 times greater at 30°C than at 10°C.	The rate of reaction increased with increasing temperature. The rate was approximately 1.5 times greater at 20°C than at 10°C, and approximately 3.5 times greater at 30°C than at 10°C.
The rate of reaction was also affected by the concentration of the reactants. The rate was approximately 1.5 times greater when the concentration of hydrogen peroxide was doubled, and approximately 1.5 times greater when the concentration of potassium iodide was doubled.	The rate of reaction was also affected by the concentration of the reactants. The rate was approximately 1.5 times greater when the concentration of hydrogen peroxide was doubled, and approximately 1.5 times greater when the concentration of potassium iodide was doubled.
The rate of reaction was also affected by the presence of a catalyst. The rate was approximately 1.5 times greater when a small amount of manganese(IV) oxide was added to the reaction mixture.	The rate of reaction was also affected by the presence of a catalyst. The rate was approximately 1.5 times greater when a small amount of manganese(IV) oxide was added to the reaction mixture.
The rate of reaction was also affected by the surface area of the catalyst. The rate was approximately 1.5 times greater when the catalyst was in the form of a fine powder, compared to when it was in the form of large lumps.	The rate of reaction was also affected by the surface area of the catalyst. The rate was approximately 1.5 times greater when the catalyst was in the form of a fine powder, compared to when it was in the form of large lumps.
The rate of reaction was also affected by the pH of the reaction mixture. The rate was approximately 1.5 times greater when the pH was 7, compared to when it was 5 or 9.	The rate of reaction was also affected by the pH of the reaction mixture. The rate was approximately 1.5 times greater when the pH was 7, compared to when it was 5 or 9.
The following table shows the results of the experiments conducted on the effect of temperature on the rate of reaction between hydrogen peroxide and potassium iodide. The reaction is catalyzed by the presence of a small amount of manganese(IV) oxide.	The following table shows the results of the experiments conducted on the effect of temperature on the rate of reaction between hydrogen peroxide and potassium iodide. The reaction is catalyzed by the presence of a small amount of manganese(IV) oxide.

- \* The state school superintendents should carefully review all policies and procedures at the facilities with the goal in mind of reducing regimentation and increasing freedom of choice for residents. Many of the complaints we received indicated this was a major problem in varying degrees at all schools;
- \* More transportation services should be made available for recreational activities. More wheelchair vans are needed to enable people in wheelchairs to partake in activities;
- \* There should be more emphasis on teaching people how to use public transportation if they are capable;
- \* More opportunities should be given to people in wheelchairs to work in supported employment. (See Section II:D for more discussion on this issue);
- \* At the state schools, more off grounds and integrated activities and experiences should be made available to everyone. Each person should have the opportunity to go into the community a minimum of once per week;
- \* Food services at the state schools should be monitored more closely to ensure that food is served hot and is appetizing; staff and consumers can serve as monitors. Menus need to be revised so that there is variety and choices available to people;
- \* The possibility of having cable television installed at the schools should be explored;
- \* More staff time should be allocated to help people partake in integrated recreational activities;
- \* More on grounds leisure time activities should be made available at the schools. Resource centers and libraries should be established at the schools which do not already have them;
- \* Every effort must be made to resolve obstacles that currently stand in the way of staff accompanying people on vacations; and
- \* The Department of Mental Retardation must address the problem of providing electric wheelchairs to people, and work out the accompanying Medicaid funding issues or seek other means of funding.





In addition to the above, the recommendations made below are in response to suggestions and concerns that would enable continued consumer input:

- \* The external Office Of Quality Assurance should continue to hold Consumer Forums on a regular basis; these should be expanded to include all persons with a label of mental retardation. The information gathered at these hearings must be incorporated into present quality assurance mechanisms;
- \* Public meetings should be held by DMR primarily for people labelled mentally retarded on a regular basis. These would provide vital information on consumer satisfaction;
- \* Continuous input from primary consumers should be assured by appointing people with mental retardation to existing committees and functions within the mental retardation system. These include:
  - \* Human Rights Committees at all levels of the DMR bureaucracy
  - \* Board of Trustees at all state schools
  - \* Family/Citizen Monitoring Committees
  - \* Local Service Center Boards
  - \* Regional Advisory Boards
- \* Advisory Committees should be established which are composed of people with mental retardation, for each state school and vendor organization. These committees would report directly to the Superintendent or Executive Director on all aspects of life at the school or residence. The ideal model would be to have the staff working with the committee be volunteers and not state employees or vendor employees. This reduces any possibility of a conflict of interest; and
- \* Staff training sessions should include one taught by consumers which might focus on respect and self advocacy.

THE UNIVERSITY OF CHICAGO

DEPARTMENT OF THE HISTORY OF ARTS AND ARCHITECTURE

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#### IV. STATUS REPORT ON COMPLETION OF CAPITAL ITEMS

The court's final order includes a listing of tasks and obligations which the state was to attend to during the three year disengagement period. A substantial number of these items pertain to completing improvements or correcting problems associated with the physical environments at the state schools and in the community. This section summarizes the status of those items and reports on several other critical capital issues at the facilities. (More detailed historical information on many of these items is available in the Office of Quality Assurance's August, 1987, and March, 1988 reports).

This office is disturbed to report that while several of the capital projects are either complete or in the process of completion, a few still do not have funding assured, and some were delayed this year because of the state's fiscal problems and the temporary freeze that was placed on the release of funds while spending priorities were reviewed by the Secretary of Administration and Finance. It is absolutely essential that administration officials not allow any further delays in these critical projects.

The Chart below succinctly presents the status of all capital items included in the court's order. Following that is a more detailed explanation of selected items included in the chart, as well as other capital issues that are of significance.

#### APPENDIX B CAPITAL ITEMS SUBJECT TO COMPLETION BY STATE

##### ITEMS REQUIRING COMPLETION

##### COMPLETION STATUS

Defendants shall complete the Housing Agenda and provide adequate housing for all class members by October, 1987.

INCOMPLETE - (See discussion below.)

Best efforts shall be used to ensure the availability of funds to provide for adequate preventive and current maintenance of buildings, grounds, systems, and vehicles.

ONGOING - State has made some effort to request funding in various accounts, but no long term mechanisms have been developed to ensure ongoing and adequate funding. (See discussion below.)

Space and Grounds committees shall be established at each state school to assist the superintendents with various physical facility issues.

COMPLETE - Committees have been established at each facility and meet in accordance with each facilities' needs.





A disposition of Fernald's excess facilities will be made by the parties upon consideration of the recommendations of the Space Utilization Committee.

The state has committed \$208,000 for sitework renovations. Plaintiff input shall be used in determining its allocation. Once work is complete, OQA's director is to recommend if additional work is necessary.

The defendants shall take whatever steps are necessary to ensure that all renovation work has been adequate, all mechanical systems are functioning adequately, and construction deficiencies are corrected.

The defendants shall ensure that residents at Templeton Colony receive adequate heat.

The roof leaks in the residential lodges at Templeton shall be repaired.

The steam boilers at the Waverly campus shall immediately be repaired.

The defendants shall take steps to increase the hot water supply at Farrell Hall.

Upon completion of the contracted study on Fernald's food service system (scheduled for completion by February, 1987), the state is to take all steps necessary to ensure Fernald's food service system is adequate to meet residents' needs.

A wheelchair ramp shall be added to the Administration Building.

There will be an annual review of furnishings and equipment through a computerized inventory process.

The defendants shall ensure that residents who require a climate controlled environment for medical reasons are provided with it, and are to report to OQA within 90 days on their plans in this regard.

INCOMPLETE - Space and Grounds Committee was recently asked to review this and make recommendations to superintendent.

INCOMPLETE - The parties have agreed on scope of work but the cost far exceeds available funds. Architect currently reducing designs. First phase of project to commence Summer, 1989. (See discussion below.)

ONGOING - Parties have been meeting monthly to review status of all ongoing projects, and outstanding concerns. (For details see discussion below)

INCOMPLETE - Funds secured for replacement of two boilers. Project currently under design.

INCOMPLETE - Roofs on two of seven buildings replaced in February, 1988. After several months delay, funding for three additional roofs available in March, 1989. Project now scheduled to begin July, 1989.

COMPLETE - Emergency repairs started in October, 1986, and project completed in August, 1987. Long-term issues to be studied in infrastructure study. (See discussion below.)

COMPLETE - Fernald in the process of installing new tanks and piping to ensure a greater supply of hot water.

INCOMPLETE - Completion of study substantially delayed, because of insufficient research on new construction vs. renovation. Study finally completed and certified in December, 1988, with recommendation for new construction. (See discussion below.)

INCOMPLETE - Design study certified in April, 1989. Project to include installation of elevator and making bathrooms accessible. Design bid to occur July, 1989.

ONGOING - This is done annually by the Fernald administration.

INCOMPLETE - Several buildings have window air conditioners installed as an interim measure. Cottage complex to have central air and climate control installed, and infrastructure study to recommend long-term solutions. (See discussion below.)

1. The first part of the paper discusses the importance of the study.

2. The second part of the paper discusses the methodology used in the study.

3. The third part of the paper discusses the results of the study.

4. The fourth part of the paper discusses the conclusions of the study.

5. The fifth part of the paper discusses the implications of the study.

6. The sixth part of the paper discusses the limitations of the study.

7. The seventh part of the paper discusses the future research.

8. The eighth part of the paper discusses the acknowledgments.

9. The ninth part of the paper discusses the references.

10. The tenth part of the paper discusses the appendices.

11. The eleventh part of the paper discusses the index.

12. The twelfth part of the paper discusses the conclusion.

13. The thirteenth part of the paper discusses the summary.

14. The fourteenth part of the paper discusses the abstract.

15. The fifteenth part of the paper discusses the introduction.

16. The sixteenth part of the paper discusses the literature review.

17. The seventeenth part of the paper discusses the theoretical framework.

18. The eighteenth part of the paper discusses the research design.

19. The nineteenth part of the paper discusses the data collection.

20. The twentieth part of the paper discusses the data analysis.

21. The twenty-first part of the paper discusses the results.

22. The twenty-second part of the paper discusses the conclusions.

If defendants decide to convert either Wheatley or Lavers to program space, they shall do so in a manner that meets residents' needs.

#### DEVER STATE SCHOOL

Buildings 2, 6, 8, 10, 12, and 14 shall be closed as the Housing Agenda is implemented. By October 1, 1986, a plan shall be developed for consolidating these buildings without overcrowding during the closing process.

The defendants shall renovate and improve the Cafeteria.

By January 1, 1987, the defendants shall perform all necessary repairs to the Fremont North and Knoll ICF's/MR.

The state shall report by February 1, 1987, what actions they are taking to either close the Colton Hospital Building and provide services either on or off campus, or renovate the building so that it complies with all relevant Title XIX standards.

The defendants shall repair the porch on the second floor of the Penton Building.

#### WRENTHAM STATE SCHOOL

The new Raymond Hospital shall be completed in accordance with the parties' "Joint Motion To Amend Wrentham Consent Decree" of January 23, 1985.

The Quinn School pool renovations shall be complete by November 21, 1986.

#### DEVER AND WRENTHAM STATE SCHOOL

The defendants shall install some sidewalks, improve others, and repair and install streetlights in accordance with scopes of work developed in 1982.

ONGOING - The facility has not chosen to utilize these buildings for program space.

INCOMPLETE - DMR submitted plan in October, 1986, for consolidating buildings, while keeping the census in each ward to no more than twelve. Schedule has not been met due to delays in the Housing Agenda. Buildings 8, 12, and 14 are now closed. (See discussion below for further details.)

COMPLETE - Project finished in June, 1987.

COMPLETE - Repairs completed.

INCOMPLETE - State reported in November, 1987, on results of a health study recommending the need for inpatient infirmary services with a bed capacity for 24 persons. Funding for both design study and design obtained in the FY89 Capital Budget. However, the design study phase is just commencing. Determination of the appropriate location for such a facility (either on or off grounds) will be made based upon the design study recommendation. (See discussion below.)

COMPLETE - Interim repairs have been made to make the porch usable by Dever residents. Additional structural work is still required to the building to prevent long-term problems from developing.

COMPLETE - Raymond Hospital was completed and occupied in April, 1988.

COMPLETE - These renovations were completed in November, 1986.

COMPLETE - This work has been completed at both facilities in accordance with scopes of work agreed to by the parties.





## A. HOUSING AGENDA COMPLETION

The Housing Agenda, the state's 1984 plan to develop suitable community housing for persons in non-compliant state school beds, called for the development of housing to serve 655 class members from Dever, Wrentham, and Belchertown state schools by November, 1987. However, these overly optimistic projections were never met as a result of many factors including site identification problems, construction delays, and a failure of the administration to anticipate the time it would take to develop housing through the local housing authorities. As of the writing of this report there are still 170 persons for whom placement options have yet to be completed, and according to the state's current projections, these programs will not all be available until sometime in the spring of 1990. Furthermore, due to the return to state schools of some persons from community programs, and ISP appeals decisions keeping others from moving, there will be insufficient capacity at Dever State School for the projected population.

To date, 42 out of a total of 46 eight person Intermediate Care Facilities (ICF's/MR) being constructed by DCPO for DMR are fully operational. In addition, 25 of a total of 52 eight person duplex apartments being constructed by the Executive Office of Communities and Development (EOCD) and local housing Authorities through the Chapter 689 program are operational. There have also been 185 placements made into vendor contracted community programs located in existing community housing. The chart below represents the status of placements made under the Housing Agenda for Belchertown, Dever, and Wrentham state schools.

### HOUSING AGENDA PLACEMENTS

SCHOOL	HOUSING TYPE	TOTAL PLANNED	TOTAL PLACEMENTS	TOTAL REMAINING
BELCHERTOWN	ICF'S/MR	61	46	15
	EOCD	41	27	14
	OTHER	<u>25</u>	<u>25</u>	<u>0</u>
	TOTAL	127	98	29
DEVER	ICF'S/MR	103	98	5
	EOCD	162	66	96
	OTHER	<u>107</u>	<u>101</u>	<u>6</u>
	TOTAL	372	265	107
WRENTHAM	ICF'S/MR	77	75	2
	EOCD	56	25	31
	OTHER	<u>59</u>	<u>58</u>	<u>1</u>
	TOTAL	192	158	34

The first of these is the question of the origin of the human race. It is generally admitted that the human race is of African origin, and that it has spread from Africa to all other parts of the world. The second question is the question of the development of the human race. It is generally admitted that the human race has developed from a lower to a higher state, and that it has done so in a regular and orderly manner. The third question is the question of the influence of the environment on the human race. It is generally admitted that the environment has a great influence on the human race, and that it has done so in a regular and orderly manner. The fourth question is the question of the influence of the human race on the environment. It is generally admitted that the human race has a great influence on the environment, and that it has done so in a regular and orderly manner.

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Year	1880	1890	1900	1910	1920
Population	1,200,000,000	1,400,000,000	1,600,000,000	1,800,000,000	2,000,000,000
Area	1,000,000,000	1,200,000,000	1,400,000,000	1,600,000,000	1,800,000,000
Population per square mile	12	11.7	11.4	11.1	10.8
Area per square mile	100	111.1	125	142.9	166.7

As a result of the delays in the Housing Agenda, there are still 90 persons residing in interim non-compliant consent decree housing at Belchertown and Dever state schools.

#### BELCHERTOWN STATE SCHOOL

As of this writing there are 11 persons at Belchertown residing in non consent decree compliant beds at the Infirmary. F Building was closed in November, 1987, and E Building was closed in April, 1989, following the opening of the Executive Office of Communities and Development (EOCD) staffed apartment programs in Springfield. It is anticipated that eight people will be able to move by the end of June, 1989, into one of two ICF's/MR in Pittsfield (on West Street) which had been delayed as a result of construction deficiencies. Unfortunately, that will leave three class members still waiting for the completion of the second Pittsfield ICF/MR (on Valentine Road) site before they can move.

Construction on the Valentine Road ICF/MR was completed well over a year ago, but there was insufficient water pressure from the town's water supply to operate the fire protection system. The town has made some modifications which has increased the pressure and the Division of Capital Planning is currently reviewing with the Department of Public Safety, if it will be adequate; if not an additional pumping device will be added. The Office of Quality Assurance is very concerned with the extended time it has taken to resolve this problem and recommends that all state agencies involved in completing this project move as expeditiously as possible to make this home available to the awaiting class members.

#### DEVER STATE SCHOOL

The Housing Agenda delays have had a far greater impact on Dever's class members than those from any other state school. The primary reason for this has been that almost half of the placements being made have been into projects developed by the Executive Office of Communities and Development (EOCD) through local housing authorities under the Chapter 689 program. In OQA's last report there was extensive discussion of the reasons why the state did not accurately project how long it would take to complete these projects. Despite the substantial efforts of EOCD to speed the development process, there still remain today approximately 79 people living in non consent decree compliant housing at Dever. According to current projections, and given the current rate of progress, it now appears that there will still be approximately 30 persons remaining in these buildings by





the end of December, 1989, and completion of all remaining projects will not occur until sometime in the spring of 1990. That would be almost five years after the state's original obligation under the Dever Consent Decree, and 2 1/2 years after the time frames established in the state's Housing Agenda accepted by court in 1984. The plaintiffs remain extraordinarily upset about this injustice, and rightfully so. There are no efforts that could be made by state officials to make up for the broken promises and lost time of the past.

There would be considerably more people waiting for consent decree compliant beds if it were not for the nine persons DMR has transferred to other institutions for the mentally retarded. These transfers have been the subject of great controversy between OQA, Dever's human rights' officer, and the state because of concerns relative to the choices and options provided to residents and their families/guardians, and potential human rights violations resulting from procedures being followed at the school in planning for these transfers. (Please see Section I:B. for a more detailed discussion of this issue.) This office has been emphatic in its opposition to the general concept of inter-institutional transfers. As a result we have stipulated to DMR that we would not accept the transfer of any Dever resident to another institution unless it is expressly approved by a guardian or family member who is actively involved, and who has been given enough information to make an informed decision about the matter. A process has been established whereby we are notified at least 45 days prior to such a proposed transfer so that we might review the circumstances and speak directly to the parties involved. Unfortunately, violations of this agreement have occurred several times as the parties disagree regarding what "active involvement" means. This term must be defined and the policy adjusted accordingly.

The 79 persons remaining at Dever in non consent decree compliant housing reside in the following locations:

- 20 in Building 10
- 36 in Building 6
- 12 in Building 2 (scheduled to be closed by July, 1989)
- 10 in Colton Building (these are people permanently residing in this building)

The Department of Mental Retardation has made some effort to improve living conditions for some persons remaining in these buildings. Building 10 has been renovated to include full height partitions between bedrooms, and air conditioning has been installed as well. While this clearly provides more comfortable surroundings for people in Building 10 on a temporary basis, it is clearly no substitute for a promised Housing Agenda placement.



In addition air conditioning has been added to Building 2, making the air quality more bearable this summer. Unfortunately, DMR's plans to make further improvements in Buildings 2 and 6 never came about because of budgetary freezes imposed by the Secretary of Administration and Finance. While it would no longer make sense to begin making those additional improvements because of current placement schedules, it is indeed disconcerting that class members affected by that funding freeze were not afforded the short-term relief they deserve after continuing to be held hostage in the L-Shaped buildings as a result of a five year delay in their placement.

Initial Housing Agenda planning reportedly accounted for the needs of all Dever class members. Yet, there are some number of persons (perhaps as many as 30 or 40) residing in the L-Shaped buildings for whom Dever now indicates that, as a result of either changing needs or successful guardian appeal of an Individual Service Plan (ISP) community placement recommendation, there is no fully compliant bed available. This group is also increased by the persons who have not adjusted to community placement and have returned to Dever. This office has requested that DMR report on the number of people who at this point fall within this category. It is absolutely essential that every effort be made by the parties to immediately determine the number of people who will need other options, and to establish a process that includes plaintiff representation to ensure these persons' needs are addressed in accordance with consent decree requirements. Time is of the essence.

## **B. MAINTAINING PHYSICAL ENVIRONMENTS**

The Commonwealth has invested a substantial amount of resources in its efforts to improve and create physical environments to meet the needs of class members. By some estimates, as much as \$400 million has been spent towards this end. These capital projects have had a major impact on the lives of persons by providing clean, safe, and in many cases more homelike settings within which to work and live. While most of the public attention has focused upon the institutional renovations, it is important to note that over \$100 million has been spent on creating new community homes as well.

In this office's last annual report, concern was raised regarding the need for the state to develop mechanisms to ensure that these facilities were adequately maintained over the long-term. While in each fiscal year there has been some ability to address problems as they arise, it is becoming increasingly clear that insufficient resources exist to meet the system's ongoing





needs for maintenance, repair, and replacement. In addition to the ongoing maintenance needs associated with ordinary wear and tear and aging of facilities, several other major cost areas have become problematic including:

- \* Replacement of aging and deteriorating furnishings and equipment;
- \* Major maintenance costs associated with poor construction quality or inadequate design planning; and
- \* Motor vehicle replacement.

#### FURNISHINGS AND EQUIPMENT REPLACEMENT

Millions of dollars have been expended by the Commonwealth to furnish and equip programs and facilities. Most of these items, however, have only a limited useful life. In fact, the wear and tear they get often causes deterioration much more rapidly than under normal conditions. This aging process has begun to take a heavy toll upon the condition of furnishings and equipment (F&E) purchased several years ago by DMR and providers, and has resulted in inferior conditions in many environments. This becomes very evident when one visits some of the older community programs, or the buildings at the state schools that were among the first to be renovated.

Funding for replacement of F&E at the state schools would normally come from the facilities' operating budgets. Funding allocations in these areas, however, have and continue to be very inadequate to keep up with current or past needs. To help address some of these problems, DMR has been able to identify approximately \$1.5 million, available from previous unexpended capital appropriations for consent decree projects. However, the needs continue to be far in excess of available resources.

Problems of a similar nature exist in community programs as well. While some adjustments have been made in the regulatory structure making it easier for agencies running ICF's/MR to plan and pay for replacement of F&E, the vast majority of providers doing business with DMR continue to find it difficult to obtain adequate resources to replace deteriorating furnishings and equipment. Unfortunately, it is often quite easy to determine how long a program has been operational by evaluating the condition of the furnishings in the house.

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## POOR CONSTRUCTION QUALITY

While many of the capital projects completed by the state have been of high caliber, it is becoming increasingly clear that several new and renovated facilities at both the schools and in the community have serious problems associated with poor construction quality. While the problems vary in scope, substantial additional costs are associated with these problems. The problems include but are not necessarily limited to:

- \* Rapid deterioration of the physical environment and such interior fixtures as kitchen cabinets and counter tops due to either poor workmanship, improper installation, or inferior materials;
- \* Structural damage caused by leakage from roofs that are either poorly designed, inadequately installed, or made of inferior materials; and
- \* Complications associated with maintaining mechanical systems that are highly sophisticated and in some cases inadequately designed.

In many cases the cost of correcting these problems is substantial and in most situations funds are not readily available for repair. Therefore, what happens all too often is that correction is put off until it becomes an emergency and then the repair costs are far greater than originally anticipated.

## MOTOR VEHICLE REPLACEMENT

The Department of Mental Retardation utilizes and maintains a large fleet of vehicles as part of its operations. These vehicles are used to provide services to consumers as well as to maintain the facilities and properties it owns. The vast majority of the vehicles are used at the state schools and state operated community programs.

Transportation is an integral part of the services provided at these locations allowing access to day programs, recreational activities, medical appointments, and opportunities for community integration. In OQA's March, 1988 report to the Governor, concerns were raised regarding variability from school to school in both the number and condition of transportation vehicles, and DMR was asked to provide a status report on the condition of vehicles at the state schools.



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The Chart below incorporates information provided in August, 1988, in response to that request. While DMR has been able to acquire some new vehicles since August, 1988, OQA would speculate that the overall impact on the condition of the vehicle fleet has been minimal since those remaining are deteriorating with age. In addition, at some locations such as Monson, though they have apparently received several new vehicles during this year, efforts to improve services have resulted in an increased need for additional as well as replacement vehicles.

#### STATUS OF STATE SCHOOL VEHICLE FLEET \*

FACILITY	MAY 89 CENSUS	# OF VEHICLES	% POOR CONDITION	% FAIR CONDITION	% POOR/FAIR CONDITION
BSS	318	46	40 %	24 %	63 %
MDC	537	42	25 %	25 %	52 %
FSS	855	113	45 %	15 %	60 %
DSS	458	77	20 %	18 %	38 %
WSS	621	84	50 %	30 %	81 %
TOTAL	2789	362	38 %	21 %	59 %

\*Vehicle information provided by DMR in August, 1988.

The data indicates that a substantial portion of DMR's state school vehicles are in poor or only fair condition. This results in frequent breakdowns and substantial maintenance costs which negatively impacts upon services to residents. Though there are no specific statistics available on the impact of vehicle problems on service delivery, a common complaint we heard from class members during our forums at the state schools was that activities that required transportation were often cancelled because of vehicle problems. People also complained about the lack of opportunity to go into the community because there weren't enough vehicles to transport them.

Elimination of the problems identified above are all dependant upon the establishment of systems and mechanisms that will ensure availability of funds when needed. The court's final order clearly recognized that maintenance of facilities and equipment was as critical to adequate service provision as the provision of staff.

There are those who would suggest that the state's current fiscal situation makes resolution of these problems difficult at this time. The Office of Quality Assurance would suggest,

The first part of the report deals with the general situation of the country, and the second part with the specific details of the project. The first part is divided into two sections: the first section deals with the general situation of the country, and the second section deals with the specific details of the project. The second part is divided into two sections: the first section deals with the specific details of the project, and the second section deals with the general situation of the country.

### TABLE I. SUMMARY OF THE RESULTS OF THE PROJECT.

Year	1950	1951	1952	1953	1954
Population	1,000,000	1,100,000	1,200,000	1,300,000	1,400,000
Area (sq. miles)	10,000	11,000	12,000	13,000	14,000
Area (sq. miles)	10,000	11,000	12,000	13,000	14,000
Area (sq. miles)	10,000	11,000	12,000	13,000	14,000
Area (sq. miles)	10,000	11,000	12,000	13,000	14,000

### TABLE II. SUMMARY OF THE RESULTS OF THE PROJECT.

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however, that failure to establish a system to deal with these needs today will result in far greater costs to the Commonwealth in the future. Failure to repair a leaky roof today will result in far greater damage to the rest of the facility in the future. Deferred maintenance rarely accomplishes anything other than increasing the scope of the problem.

Until such time as long-term solutions are found to resolve this issue, class members and other consumers will continue to be at risk of living in substandard environments and being restricted in their access to programs and services. It is, therefore, essential that the state proceed immediately to address this problem.

### C. STATE SCHOOL UTILITIES AND INFRASTRUCTURE PLANS

The state schools have undergone extensive renovations over the last ten years in response to consent decree obligations. These changes have greatly improved the quality of life for many class members, but they have also had a major impact on the schools' utilities systems and infrastructure. While the vast majority of funding for capital improvements went towards residential and program building improvements, very little went towards upgrading the systems required to maintain and support a modern physical plant. It is increasingly clear to DMR that additional efforts are going to be necessary in this area, and they have begun a study of those needs.

The first facility to undergo this process will be the Waverly campus at Fernald State School. A design study has just been initiated by the Division of Capital Planning and Operations (DCPO). The purpose of the study will be to produce plans documenting existing utilities and site features, and to develop a comprehensive proposal for utility system and infrastructure improvements on the campus. The Department of Mental Retardation has also requested funding in the FY90 Capital Budget for similar studies at the other facilities. The Office of Quality Assurance is pleased that DMR is pursuing the identification of these needs and hopes actions will be taken in the future to ensure that systems exist to adequately support the facilities' physical plant.





## D. MONSON DEVELOPMENTAL CENTER

### PROVISION OF ADEQUATE PROGRAM OPPORTUNITIES

Monson continues to make progress in providing additional program opportunities for its residents. The school's major goal has been to increase their capacity to serve people during the day in locations that were outside their residential buildings. Because of the large number of physically disabled persons at Monson and the topography of the campus being very "hilly," this has been a particularly challenging task. The school's initial response to problems in this area was to convert Baypath residential building into program space in 1987 to provide for additional space. Despite this action, the school continued to report that many people were still afforded very few opportunities to have activities away from their building. In OQA's last report it was reported that Monson officials had been working hard on improving conditions in this area. We are again pleased to report substantial progress of improving day program/employment opportunities for residents continues to be made. The figures below provided by Monson indicate the progress that has been made to date:

#### DAY PROGRAM CHANGES AT MONSON

##### NUMBER OF PERSONS NEEDING OUT BUILDING SPACE

January 1988 -	140
June 1988 -	121
June 1989 -	82

##### NEW DAY PROGRAM OPPORTUNITIES SINCE JUNE 1988

Community Day Programs -	25
Out-of-Building on Campus -	39

Of the 82 persons originally identified, Monson officials now feel 22 have medical conditions which would prevent them from being able to go to full day out-of-building programs. For the 60 persons still requiring alternative locations, 27 will go to Berkshire Building when it is closed for residential use (currently planned for October, 1989), and 14 are scheduled for community placement. That leaves 19 persons for whom additional plans still need to be developed.



The effort that has been undertaken by the facility has brought several problems to the surface that must be addressed. While the facility has received some additional vehicles during this past year, it still needs three wheelchair vans and one regular van to provide adequate transportation. In addition, the facility never received any funds for program equipment as new sites have been developed. This factor, combined with the lack of a system for equipment replacement, has left them with inadequate resources in this critical area. Finally, renovations to Buckley and Simons buildings called for only one elevator in each building. When these break down, people are unable to get out of the building to attend their programs. The Office of Quality Assurance recommends that DMR immediately develop solutions to these problems and continue to assist Monson officials with implementation of their plans.

A common theme expressed by class members at the forum held at Monson was the desire to have more opportunities to go off grounds both for work and recreational activities. While this office commends the efforts Monson officials have made to date, it is essential that progress in this direction continue to be made, and that DMR provide the school with the resources necessary to accomplish this task.

## **E. FERNALD STATE SCHOOL**

### **GREENE BUILDING**

After more than two years of delays and problems associated with questionable construction quality (this building was originally scheduled to open in April, 1986), Greene Building was finally occupied in March, 1989. While much effort has gone into attempting to correct problems associated with the very complex heating/ventilation/air conditioning (HVAC) system, concerns still exist regarding its ability to adequately maintain temperatures during the coldest of winter months and during the summer season. The facility has and must continue to have the system maintained and serviced through an expensive maintenance contract. They have also been asked by this office to continue to track temperatures to ensure adequate climate control. It is essential that this continue to be carefully monitored and if problems arise, they must be corrected immediately to protect the health and safety of some of the school's most medically fragile residents.



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Work is also ongoing in this building to install sprinklers in the gym and pool area, increase water pressure for the sprinkler system (a life safety code deficiency), and repair the air conditioner in unit #6. Contracts have been awarded for all of these by DCPO with completion expected by late summer of 1989. There are also a few minor outstanding issues raised by the Department of Public Health-Life Safety Inspection that still must be addressed. The Division of Capital Planning must seek final resolution of these items as soon as possible. This office will continue to monitor completion of all of the above items.

#### THOM BUILDING

Renovation of Thom Building, the school's infirmary and residential building for severely medically needy persons, is another project like that at Greene which has experienced an ongoing number of complex problems. This project was originally scheduled for completion in the summer of 1987, but numerous issues have arisen over the past two years which continues to affect full use of the building. It appears that every time one problem is resolved, another climbs to the surface. The Office of Quality Assurance's last report identified several problems that the state was in the process of attending to. The Department of Mental Retardation and DCPO were asked to conduct a final review of the building to ensure that no further impediments to occupancy remained. As a result of several meetings with DPH, DMR, and DCPO, it was determined that certain relatively minor corrections were required to meet life safety code requirements. These corrections were made and in April, 1989, the school began to utilize the non-residential portion of the building which houses the school's medical offices.

Partial occupancy has led to the discovery that there may also be problems with maintaining adequate temperature control. The discovery of this problem has again delayed residential occupancy of the building. As of this writing, DCPO is attempting to determine what the problems are and how extensive the necessary corrections might be. It is absolutely essential that these final problems get resolved immediately. The length of time this project has dragged on is unacceptable.

In total, these further delays have also presented Fernald with another very serious problem because they will have to move the people scheduled to reside in Thom out of their current temporary residence at the Shriver Center. Shriver hoped to have that space available by July, 1989, in order to meet another commitment they had made for providing office space for a university affiliated research project. Immediate actions must be taken to resolve these final problems.



### CONVERSION OF WOODSIDE AND BROOKSIDE BUILDINGS

The conversion of these two temporary residential buildings into day program space was initially held up because of delays in completion of Greene Building. More recently A&F's temporary hold on the release of funding delayed the project further. The contract for this project has now been awarded. Construction is now scheduled to start in July, 1989, with completion in September, 1989.

### SITE IMPROVEMENTS PROJECT

At the time of court disengagement, the state had already committed itself to expend \$208,000 at Fernald to improve exterior site conditions on campus. The court's order therefore stipulated the expenditure of these funds and indicated that OQA, upon completion of this project, was to recommend if any additional work was necessary to protect the health and safety of class members. Distressingly, this project has taken an exceedingly long time to develop and is still only in the design stage.

Representatives of Fernald and the plaintiffs have agreed on all the work they feel is necessary to adequately improve exterior conditions at the Waverly campus, and have been working with the designer accordingly. However, the projected costs of these items is over \$600,000, far in excess of the original amount. A list of priority items that would fit within the current allocation has been agreed to, and DMR has now asked the designer to proceed towards final designs on those items in order that the project can be bid upon and completed before the upcoming winter. Meanwhile, OQA is in the process of reviewing with DMR and the plaintiffs the identified items that will not be addressed under the current contract, and will determine what remaining items must still be completed to comply with the court's order of protecting residents' health and safety.

Now that the designer is at the stage of producing final documents, OQA requests that DMR establish a schedule for the completion of the first phase of this project. Every effort should be made to ensure completion before the winter months of 1989.



# THE HISTORY OF THE UNITED STATES

The history of the United States is a story of growth and change. From the first settlers to the present day, the nation has evolved through various stages of development. The early years were marked by exploration and settlement, followed by a period of rapid expansion and industrialization. The American Revolution and the Civil War were pivotal moments in the nation's history, shaping its identity and values. The 20th century brought significant social and political changes, including the rise of the American Dream and the challenges of the Cold War. Today, the United States continues to evolve, facing new challenges and opportunities in the global landscape.

## THE AMERICAN REVOLUTION

The American Revolution was a period of significant change and growth. It began with the signing of the Declaration of Independence in 1776, which declared the colonies' independence from Great Britain. The revolution was fought between 1775 and 1783, with the British ultimately losing the war. The revolution led to the creation of the United States as a new nation, with a constitution that established a system of checks and balances. The revolution also marked the beginning of a new era of American history, characterized by a sense of national identity and a commitment to the principles of liberty and democracy.

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## RESOLUTION OF OUTSTANDING DEFICIENCIES AND PROBLEMS

Since the creation of OQA, the parties have been meeting monthly to review status of all ongoing projects, and to determine what additional work might be necessary to complete projects. Many of the issues reviewed are reported on in this section of the report, and others have been addressed in previous reports. There are, however, many additional concerns that the plaintiffs have regarding the quality of the physical environment in certain buildings. Issues of concern include but are not necessarily limited to the replacement of many problematic windows on campus, problems with the fire alarm system, a need to replace the Cottage rooftop HVAC units, adequacy of mechanical systems in certain buildings, repair of certain elevators, and improvement of air quality in Wallace and Seguin.

The Department of Mental Retardation and DCPO have begun to make some progress in addressing some of these concerns. An extensive project is now underway to replace the Cottage rooftops' HVAC units; a small contract has been executed to make some short-term improvements in the Wallace and Seguin buildings' ventilation systems; and DMR has identified approximately \$400,000 from existing funds to begin to make needed repairs to the fire alarm system, and Fernald is preparing specifications for the necessary service contract. In addition, DMR has set aside \$366,000 to replace problematic windows throughout the campus, though it is not yet known whether that amount will be sufficient to correct all the problems.

Notwithstanding the above, in some situations DMR efforts are only a partial response that may well require further actions, while in others, concerns continue to remain either uncorrected or yet to be investigated. The Office of Quality Assurance, therefore, recommends that Commissioner Mary McCarthy request Fernald's Superintendent, after consultation with its Space and Grounds Committee, to identify all remaining capital concerns and that DMR develop a plan in conjunction with DCPO for their investigation and correction.

## TEMPLETON ROOFS

This office originally became aware of the problem of leaky roofs at Templeton Colony in July, 1986. In March, 1987, DMR informed OQA that DCPO had arranged for the study of this issue, and that plans and specifications for their replacement were being drafted. Now, more than two years after that

THE HISTORY OF THE UNITED STATES OF AMERICA

The history of the United States of America is a story of growth and change. It begins with the first settlers, who came to the New World in search of a better life. They found a land of opportunity, but also a land of challenge. The early years were marked by conflict and struggle, as the settlers fought to establish their own communities and defend themselves against the forces of nature and the indigenous peoples. Over time, the United States grew from a small colony into a powerful nation, with a rich and diverse culture. The story of the United States is a story of the American dream, of the pursuit of happiness and the promise of a better future for all.

The United States has a long and proud history, and it is a country that has made many contributions to the world. From the first settlers to the present day, the United States has been a land of opportunity and a land of hope. It is a country that has stood for freedom and democracy, and it is a country that has made many sacrifices for the sake of the American dream. The history of the United States is a story of the American people, and it is a story that continues to inspire and motivate us today.

The United States is a country of many firsts, and it is a country that has made many contributions to the world. From the first settlers to the present day, the United States has been a land of opportunity and a land of hope. It is a country that has stood for freedom and democracy, and it is a country that has made many sacrifices for the sake of the American dream. The history of the United States is a story of the American people, and it is a story that continues to inspire and motivate us today.

communication, replacement of the leaking roofs has still not been accomplished, and this problem continues to have a negative impact on the quality of life in these buildings.

After great persistence by many parties, including emergency requests to DCPO by DMR's Commissioner Mary McCarthy in June, 1987, and Assistant Commissioner Steven Rothstein in October, 1987, roofs on two of the seven problematic buildings (these two were identified as having the most serious leaks) were replaced in February, 1988. At the time, however, DMR indicated they would have to await passage of the FY89 Capital Budget before they could proceed with repair of the remaining roofs. While funding for the remainder of this project was supposedly made available through the budget, it is very distressing to report that DCPO is just now awarding a contract for replacement of three of the remaining roofs. This delay of almost one full year, caused in part by the administration's temporary freeze on capital spending, has resulted in further deterioration of already extremely unpleasant conditions in these three buildings. Two of the buildings serve as residences, and in several locations beds have to be moved when it rains to avoid water dripping on residents. The third building houses the Cafeteria and rainy weather often results in numerous leaks; buckets are used to catch the leaks, and the layout has to be rearranged so that people don't get wet while they are eating. It is absolutely essential that this project be completed without any further delay and that funding be identified immediately to replace the remaining problematic roofs.

The state's inability to respond to this problem in a timely fashion is of great concern to this office. Particularly when the question of need is so well defined and the negative consequences of delay are so clear, the bureaucratic process must be able to respond in a much more rapid fashion. Without a more reasonable and timely response system to address problems such as these, we run the real risk of seeing the facilities revert to the horrid physical conditions that existed prior to the consent decrees.

#### FOOD SERVICE BUILDING

The Office of Quality Assurance's March, 1988 report detailed the problems associated with completion of the study to determine the need for either replacement or renovation of Fernald's aging and deteriorated food service building. While this was initially to be completed by February, 1987, it took





until December, 1989, for the study to be finally certified and accepted by DMR and DCPO. Completion of the study was substantially delayed in part because of insufficient research regarding the comparison of new construction vs. renovation. The study's recommendation is for construction of a new facility adjacent to the current one. Given the costs associated with rehabing the aging building, and the anticipated expenditures that would likely be part of maintaining the food service system during renovation, it was felt that replacement would, in the long run, be both more cost effective than renovation, and would provide a structure more adequately designed for food service preparation and delivery.

Funding for design and construction was requested by the Governor in the FY90 House I budget request. It has not, however, been included in the budgets passed by either the House or the Senate. Nevertheless, DMR has identified sufficient funding from existing appropriations for the design phase and has requested that the Designer Selection Board select a designer for this project. The Office of Quality Assurance is encouraged by this action and strongly recommends that the state proceed immediately with the design and construction of this sorely needed building.

#### CLIMATE CONTROLLED ENVIRONMENTS

In response to the court's order, a report was filed in April, 1987, identifying the number and location of persons who currently, and in the foreseeable future, will need climate controlled environments for medical reasons. Wallace, Seguin, and Belmont were buildings identified at that time as needing, but not having such capacity. As an interim measure, Fernald proceeded with the installation of window air conditioners in these and in certain other locations. This was not accepted, however, by plaintiffs or OQA as a final solution to this problem. Since that time, additional air conditioners have been installed in several other locations and DMR is replacing the Cottage roof top heating and ventilating units with systems that provide central air conditioning (and in four cottages, full climate control). In addition, in the current comprehensive study of Fernald's infrastructure needs (see section VI:C.), a final determination will be made regarding the provision of climate controlled environments throughout the campus. It is essential that upon completion of this study, DMR proceed immediately to complete this outstanding project.



## **F. DEVER STATE SCHOOL**

### **DEVER MEDICAL FACILITY**

The court's final order stipulated that Dever's current Colton Infirmary did not comply with Title XIX requirements, and that the state, after consideration of what residential and medical needs are provided for in this facility, shall take actions to provide those services either on or off campus, or renovate the Colton Building so that it complies with relevant Title XIX standards.

The state reported in November, 1987, on the results of a health care study which recommended the need for inpatient infirmary services with a bed capacity for 24 persons. The state obtained funding for both design study and design in the FY89 Capital Budget. However, because of A&F's temporary hold on capital expenditures, the design study phase is just now commencing.

A major dispute exists between the Dever parents' association and the Massachusetts Association for Retarded Citizens, both plaintiffs in the Dever consent decree case, regarding the appropriate location of a replacement facility. One of the tasks of the design study will be to thoroughly research this issue and make an informed recommendation regarding the appropriate location for such a facility, including whether it should be on or off the Dever campus. It is essential that every effort be made to proceed through this process in an appropriate manner so that an adequate and more humane environment is created for the services provided in the Colton building as soon as possible.



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**APPENDIX A**

**Consent Decree Services Survey**

**APPENDIX B**

**Memorandum from Michael Kendrick to Area Directors, March 12, 1987  
(12 Critical Safeguards for the Assurance of Relevant and Highly Focussed  
"Service" for Clients of the Present System)**

**APPENDIX C**

**Office of Quality Assurance for MR Consent Decree  
Testimony in Favor of  
Senate 607  
An Act to Protect Disabled Persons**

**APPENDIX D**

**Letter to Department of Mental Health from Sharon Moriearty, April 21, 1987  
(concerning proposed DMH regulations, 104 CMR 20.15, regarding Behavior  
Modification)**



CONSENT DECREE SERVICES SURVEY

\*\*\*\*\* PLEASE NOTE - THERE ARE QUESTIONS ON THE BACK OF THIS \*\*\*\*\*  
PAGE - PLEASE BE SURE TO COMPLETE THE OTHER SIDE.

1. What positive changes in mental retardation services have been brought about as a result of the Consent Decrees for persons labelled mentally retarded?
  
  
  
  
  
  
  
  
  
  
2. What negative changes have been brought about by the decrees for persons labelled mentally retarded?
  
  
  
  
  
  
  
  
  
  
3. Are you currently satisfied with services provided by the Department of Mental Retardation?  
  
\_\_\_\_\_ Yes \_\_\_\_\_ No  
  
Please comment on your choice:
  
  
  
  
  
  
  
  
  
  
4. What things should be different in M.R. services?
  
  
  
  
  
  
  
  
  
  
5. What things should remain the same with M.R. services?
  
  
  
  
  
  
  
  
  
  
6. What type of monitoring, if any, do you think is necessary to ensure a high standard of quality in M.R. services?



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7. Please check the structure that you think would be most effective in performing quality assurance (monitoring) activities:
- \_\_\_\_\_ A system internally controlled by DMR
- \_\_\_\_\_ A system completely external to DMR and Executive Office of Human Services
- \_\_\_\_\_ A combination of internal and external activities
- Other: \_\_\_\_\_
8. What are the strengths of the services provided at state schools?
9. What are the weaknesses of the services provided at state schools?
10. What are the strengths of the services provided in community settings?
11. What are the weaknesses of the services provided in community settings?

Please check in what way(s) you are associated with class members:

_____ Parent	_____ DMR employee working in State School
_____ Sibling	_____ DMR employee working in community
_____ Other Relative	_____ Community Based Service Provider
_____ Advocate	

If you are a family member, guardian, or advocate for a particular class member, please answer the following:

Your age \_\_\_\_\_ Age of person with M.R. \_\_\_\_\_

Services received by person labelled M.R.:

THANK YOU FOR YOUR PARTICIPATION -- PLEASE RETURN SURVEY TO:

Office of Quality Assurance for M.R. Decrees  
Lindemann Mental Health Center  
25 Staniford St.  
Boston, MA 02114

REPORT OF THE  
COMMISSIONER OF THE  
BUREAU OF CHEMISTRY  
FOR THE YEAR 1900

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1901

THE UNIVERSITY OF CHICAGO  
DIVISION OF THE PHYSICAL SCIENCES  
DEPARTMENT OF CHEMISTRY  
CHICAGO, ILL.

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DEPARTMENT OF CHEMISTRY  
CHICAGO, ILL.

# THE NORMALIZATION SAFEGUARDS PROJECT

187 High Street / Holyoke, MA 01040 / (413) 533-3584

Michael Kendrick, Director

## MEMO

TO: Area Directors  
FROM: Michael Kendrick *MK*  
DATE: March 12, 1987

RE: 12 Critical Safeguards for the Assurance of Relevant and Highly Focussed "Service" for Clients of the Present System

I know that I am making you awasn in material to read about the needed and positive role of safeguards but I thought this piece would help you conceptualize what may still be a very abstract idea. These nere are safeguards you have either already started or could develop.

1) An Ultimate Unambiguous "Fixed" Point of Responsibility For Persons

Much can remain unresolved in a client's life because no one is clearly ultimately fixed as the one who has final responsibility. The system, the client, and others need to know who this is in order to make the service system more responsive and accountable.

2) Small "service" settings and groupings

People and their needs get lost when there are too many others competing for attention and priority. Keeping services small helps raise the person to prominence and centrality to service focus. Such groupings tend to confirm impressions of the clients as fitting in with the way most people live in community life.

3) Small specialized agencies deeply "imbedded" in local communities

Agencies that become big lose sight of the person. Not all persons have the same needs nor do all agencies have the special love, and affinity for certain kinds of these needs and people that ultimately makes for inspired service. Agencies that operate in many communities, apart from being too big and aggrandizing, tend to not be "of" the community and responsive to it. By remaining "within" the control and influence of a community these kinds of agencies support community and the eventual welcome of those whom it serves into the lives of that community.

4) Arrangements That Can Permit and Exalt Personalized Service.

One person is not another. It is always dehumanizing when peole are forced to fit into pre-arranged programs as this may not be what they need. Thus administrative, policy and program arrangements that permit and urge personalized solutions "works" better for people.



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5) Provisions To Maintain Stable Staff Involvements

So much of what quality service is requires that constancy be present in the relationship between staff and clients. Many human problems are resolvable, but only given a long enough period of time. Equally, staff may only be able to become properly attuned to what they must do if they've been immersed in the subject long enough to gain confidence, specificity and pace.

6) Highly Concretized Concepts and Priority To Social Integration (Valued Social Roles) For Clients

No service system can be a satisfying substitute for the community life. Services cannot succeed without the intensely pursued utilization of the rich moral, personal, economical and communal potential of communities. Services are at great risk of trying to get by without community because gaining these advantages means prolonged and thoughtful interaction with communities.

7) Valued family/familial involvement

One of the most central traditions of our culture is the primacy of family and familial involvements. Depriving people of these through neglect, indifference or expedience is an unwitting anti-social act. As imperfect as families are, they are fundamental to life and living and can authentically help to protect, nourish and dignify the person.

8) Citizen Advocacy

One of the best protections against isolation, neglect and depersonalization is the presence of persons who are interested in you simply because they want to. If these persons also understand that they are to stand with the persons against that which would harm her/him and for that which would help -- the person will not be forgotten in the scramble for other priorities.

9) Voluntary Values Focussed Orientation, Education and Renewal

It is a matter of practical management that human beings operate from a base of deeply held values. These values profoundly influence every aspect of service. Staff benefits from the voluntary address of the many value dilemmas confronting service workers. The system, if it is to accomplish lofty goals, must continually keep them focussed, renewed and challenged or they will become simply slogans.

10) External Oversight and Monitoring

Systems, programs and individuals who know their work is being independently evaluated tend to be more responsive and accountable than those which are left without oversight. Independent scrutinizing sharpens performance, allows for creative controversy and protects those without power and independent defense.

1. The first part of the paper discusses the importance of the study and the objectives of the research. It also mentions the scope of the study and the limitations of the study.

2. The second part of the paper discusses the methodology used in the study. It includes the data collection methods, the sample size, and the statistical methods used for data analysis.

3. The third part of the paper discusses the results of the study. It includes the findings of the study and the conclusions drawn from the results.

4. The fourth part of the paper discusses the implications of the study. It includes the practical implications of the study and the theoretical implications of the study.

5. The fifth part of the paper discusses the limitations of the study. It includes the limitations of the study and the limitations of the study.

6. The sixth part of the paper discusses the conclusions of the study. It includes the conclusions of the study and the conclusions of the study.

7. The seventh part of the paper discusses the future research. It includes the future research and the future research.

11) Commitment Of A Percentage of Resources, Agencies and Settings To  
Projects of Innovation and Excellence

People and systems who do not deliberately invest in projects of change, improvement and excellence become mediocre and lose forward momentum. It is costly to do so but it means that the system is more open, pioneering, resourceful and critical. Leadership and innovation must be encouraged and backed.

12) Systematic Design To Diminish Bureaucratization

Agencies, programs and systems easily descend into missed opportunities, waste and irrelevance when the stifling grip of bureaucracy hardens its collective arteries. Ossification of this kind can be anticipated and deliberately reduced as a threat. First though, it must be prominent as a consideration at the highest and lowest levels of leadership or it will outline even those who thought its grip could be eluded.

MK/js





Office of Quality Assurance for MR Consent Decrees

Testimony in Favor Of

Senate 607

An Act to Protect Disabled Persons

The Office of Quality Assurance for the Mental Retardation Consent Decrees (OQA) is providing this testimony in favor of Senate 607, An Act to Protect Disabled Persons.

OQA was established to monitor programs to persons with mental retardation who are class members under the MR Consent Decrees. In this capacity, we advocate for 6000 persons with mental retardation across the Commonwealth.

We believe that all people should be given the opportunities and encouragement to learn, develop and grow to their fullest potential in a nurturing and positive environment. The use of physical punishment, which causes or is designed to cause physical pain, is not allowed by law in the Commonwealth's public schools or prisons and, we feel, should not be allowed in state licensed or certified programs for people with mental retardation or other disabilities.

There is no conclusive data that physical punishment is more effective than well planned, consistently controlled non-violent interventions. In the absence of such conclusive data, and with the common sense belief that humans should not inflict pain upon each other, interventions must be chosen according to what will do the least harm. This is the only responsible choice given the state of research in this area and recognition of our human bonds with those who are the potential victims of this type of punishment.

Therefore, the Office of Quality Assurance is opposed to the use of any intervention or aversive procedure which causes physical pain to change someone's behavior and whose use would not be allowed on a non-disabled individual.

Persons with mental retardation are among our most vulnerable citizens and are dependent upon public officials to protect them from harm. We greatly appreciate this committees favorable passage of this bill in years past. We again urge its passage. We also urge you to apply your substantial influence in seeing its swift passage through the entire legislative process and into law.

Thank you.

ORIGINAL ARTICLES

THE EFFECT OF VARIOUS FACTORS ON THE RATE OF  
RECOVERY FROM THE EFFECTS OF ANESTHESIA  
BY J. H. HARRIS, M.D., AND J. H. HARRIS, JR., M.D.

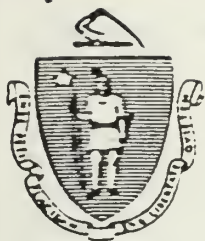
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*The Commonwealth of Massachusetts*  
*Office of Handicapped Affairs*  
*One Ashburton Place — Room 1305*  
*Boston 02108*

MICHAEL S. DUKAKIS  
Governor

JIM GLEICH  
Director

727-7440  
Voice & TDD  
1-800-322-2020  
Voice & TDD

April 21, 1987

Richard Ames, Esq.  
General Counsel  
Department of Mental Health  
160 N. Washington Street  
Boston, MA 02114

Dear Dick:

The Office of Handicapped Affairs would like to comment on the March 9, 1987 draft of the proposed DMH regulations, 104 CMR 20.15, regarding Behavior Modification. We apologize for the delay in providing these comments and trust our remarks are still timely.

Our recommendations fall into three categories:

- The department should define an absolute standard beyond which no procedure can be authorized, or consented to
- Behavior Modification programs employing aversives should be treated as experimental programs and subject to the Department's Research regulations, 104 CMR 13.00
- Regulations governing Behavior Modification programs employing aversives should incorporate, at least, the strongest procedural protections for individuals that exist in current DMH regulations, including ISP regulations at 104 CMR 21.00, Seclusion and Restraint Regulations at 104 CMR 3.00, and Research Regulations at 104 CMR 13.00 as well as applicable case law, including Rogers v. Okin and the recent settlement in Behavior Research Institute v. Mary Kay Leonard.

1. Absolute Standard

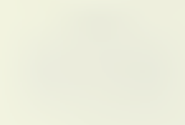
OHA feels strongly that Department regulation of aversive-oriented behavior modification programs should set an absolute standard of prohibited actions. Where the proposed regulations posit the state's



Memorandum for the President  
of the United States  
on the subject of  
the proposed  
amendment to the  
Constitution of the United States  
relating to the  
electoral college



January 1, 1901  
Washington, D. C.



The President of the United States  
has the honor to acknowledge the receipt  
of your letter of the 28th inst.  
and in reply to inform you that the  
same has been forwarded to the  
proper authorities for their consideration.  
The President is also pleased to  
inform you that the same has been  
forwarded to the proper authorities  
for their consideration.

role at "clinician," the more critical role of the state in this area, in our opinion, moral. The proposed regulations abdicate this crucial responsibility and allow any procedure, no matter how intrusive or painful, including certain seclusion and restraint procedures currently prohibited at 104 CMR 3.00, to be mitigated as therapeutic under the rubric of behavior modification. We feel it is inadequate of a government agency to wholly defer, as these regulations do, substantive regulation of all aversive interventions to a process of clinical review. Rather, it is incumbent on DMH, as the agent of state policy in this area, to establish a moral and ethical baseline, and we urge the Department to adopt the standard proposed in Senate 550, now pending, which prohibits, outright, procedures which inflict pain, any procedure administered while the individual is in restraints, or which denies an individual adequate sleep, shelter, bedding, food, or bathroom facilities.

### Research Precautions

We feel behavior modification programs employing aversive techniques are experimental and should, without exception, be treated as research programs under 104 CMR 13.00. The original draft regulations proposed that behavior modification programs have an option of qualifying under 104 CMR 13.00 or the proposed regulations. The March 9 draft retreats even further and proposes a wholly separate certification process and does so without proposing any substantive standards to guide such a certification process. We propose an adaptation of the existing research program protocol, including expansion of the central committee (or creation of a subcommittee on behavior modification) to include appropriate expertise and client advocate representation. In addition, we would add, analogous to research requirements that each DMH facility have a clinical review committee, a Peer Review Committee. Disagreeing with the instant regulatory proposal we would have this committee exercise meaningful authority to object or alter proposed interventions and we would have all members be otherwise independent of the program.

In keeping with the Research context, OHA recommends that programs receiving permission to employ non-prohibited aversives be afforded a waiver and not a certification as proposed. The proper posture for government in this area is a preference for programs utilizing positive reinforcements. Aversive procedures must be a cautious exception to the rule, not the rule. Consistent with the monitoring requirements of the Research regulations, such a waiver should be granted for 1 year only.



The advantages of applying the Research program protocol to behavior modification include the availability of a tested credentialing process, with explicit standards, the temporary nature of certification, annual review schedule, strong client consent procedures in addition to court review where applicable and rigorous risk/benefit standards.

We note the current draft regulations do propose use of a risk/benefit standard to determine, in addition to consent procedures, the appropriateness of interventions. However, the standard proposed ("a determination ... that the predictable risks, as weighed against the benefits of the procedure, would pose an unreasonable degree of intrusion, restriction of movement, physical harm or psychological harm." (Emphasis added)) is much weaker than the corresponding Research equation (... "for each client, the benefit....as a result of the research must equal or exceed such risk, or such risk must be no more than minimal... minimal risk means... the risk that is normally encountered in the daily lives... of persons who are not clients.")

To provide adequate client protections, we would recommend a combination of the current procedures in 104 CMR 13.00, which provide for appointment of a client advocate, for withdrawing from the research program at any time, for a witness to the act of consent, and for a "right of last refusal" which enables minors and clients under guardianship to successfully object (but not consent to) experimental procedures, as well as the procedures for court review set forth by the settlement in BRI v Mary K. Kay Leonard. These latter standards provide appropriately broad jurisdiction in terms of the range of procedures subject to court scrutiny as well as for a non-discretionary independent evaluation of the individual and the individual's program. Consistent with our recommendation in Section 1 of this letter, we would not permit the fulfillment of technical, legal consent requirements to alone define the acceptability of any aversive procedure.

### 3. Applicability of Existing Standards and Protections

In many instances, the proposed regulations provide exceptions or inferior procedures to existing regulation or case law. These include:

- a range of level III acts, which require court review, which is narrower than the range of "aversives" defined for court review in BRI v Mary Kay Leonard, the effect of which is to limit access of individuals to court protections.





- optional independent client evaluation in court review of level III procedures where the aforementioned court settlement requires it.
- provision for the head of a program to consent to level I or II procedures on behalf of an individual where the court settlement provides no occasion for consent by head of the program.
- exceptions, seemingly based on a semantical distinction between "Behavior Modification" and "Restraint," to the Restraint Regulations at 104 CMR 3.00 where the court settlement requires compliance with DMH seclusion and Restraint Regulations. Exceptions include suspension, except in case of emergency, of order, documentation, and supervisory review of an upper time limit on timeout procedures; lack of standards regarding program staff who can initiate timeout or seclusion; and a general exception that Restrictive procedures are automatically consistent with Restraint regulations where an individual consents;
- an apparent blanket exception from the protections and standards of the decision in Rogers v Okin concerning use of psychotropic drugs as part of treatment or behavior modification.
- though compliance with ISP regulations is required, as is appropriate, the Department has such regulations in place only for mentally retarded clients. Only mental health clients in Region I, by virtue of court order, enjoy the standards and protections of individualized program planning in measurable objectives with periodic review, modification, and client participation requirements.
- apparently a new provision in the body of DMH program regulation, which exempts "rules established by a program for the maintenance of an ordered program environment," would seem to condone corporal punishment. Corporal punishment is prohibited by parallel regulations of the Department of Education governing 766 approved schools.
- as mentioned above, the omission of certain, strong protections provided by the Department's research standards, including superior provisions for client consent, where a court is not involved, and a strong risk/benefit standard.



It is our position that the Department's behavior modification regulations should adhere at least to the strongest standards extant and that, in its redraft, the Department in corporate essential protections from the Research and Restraint regulations as well as the court settlement in BRI v Mary Kay Leonard, Rogers v Okin, and the consent decree governing Region I programs for mental health clients.

In addition to comments above of a more systemic nature, we recommend the following specific changes in the March 9 draft:

20.15(4)(f) - see comments above regarding program certification requirements. Also, in this paragraph, the term "restrictive" should be defined.

20.15 (2) - the Department should use a consistent definition of "behavior modification". The one proposed is different from 104 CMR 20.02 (13).

- the definition of "aversive stimuli" provides a conclusory rule by stating these procedures have a decelerating effect upon target behavior. Such programs must still be regarded as experimental with tentative results.

20.15(3) - the advisory Panel on classification of behavior modification programs should include a client representative. This is consistent with the Research regulations.

20.15(3)(b)(3) - timeout for periods up to 1 hour should not be classified as level I procedures. see also comments above on use of Restraint regulations.

20.15(3)(d) - Level III procedures should be banned outright.

20.15(4)(a)(1) - see comments above regarding exceptions to Restraint regulations.

20.15(4)(a)(3) - see above regarding corporal punishment.

20.15(4)(b)(1) - see comments above regarding incorporation of research regulations.

20.15(4)(4)(b)(3) - requirements for behavior modification programs should include the requirement that programs have actually, and unsuccessfully, tried positive reinforcement techniques before resorting to negative behavior modification procedures.





20.15(4)(b)(5) - the regulations should include standards for determining the requirement that "behavior modification may be used... only if deemed clinically appropriate in the professional judgement of treating clinicians." We recommend a peer review report be required as well as use of the research protocol.

20.15(4)(6)(b,c) - see comments above regarding timeout procedures.

20.15(4)(c) - similarly, the written behavior modification plan required should include a projection, in measurable terms, of when it will be appropriate to employ positive reinforcement procedures again.

20.15(4)(d)(3) - the Human Rights Committee which reviews Behavior Modification plans for use of level II and level III procedures, should require notification within 24 hours where these procedures are employed in an emergency, and require a plan within 48 hours.

20.15(4)(d)(5) - as designed, the proposed Peer Review Panel, which reviews level II and III plans, is redundant of the Human Rights Committee. Consistent with the BRI court settlement, the Peer Review Committees should not be merely advisory in nature, and should be wholly independent of the program.

20.15(4)(d)(6) - see comments above regarding requirement of the BRI court settlement for independent clinical review of court cases.

20.15(4)(e) and 20.15(4)(a)(1) - the state agency should prohibit certain procedures regardless of consent. See comments above.

20.15(4)(e)(1)(a) - a peer review should be required before implementation of level II procedures. Level III procedures should be banned.

20.15(5) - see comments above regarding availability of ISP procedures for mental health clients.

Thank you for the opportunity to comment. Your task is a difficult one, and I look forward to the opportunity for further comments as the draft proceeds to promulgation review.

Sincerely,

*Sharon*

Sharon Moriearty  
Deputy Director

cc: Bill Crane  
Steve Shwartz  
Gunnar Dybwad  
Harry Beyer

SM/awr











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